

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



JOINT APPENDIX

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680  
IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,152

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BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants*,

v.

THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
ET AL., *Appellees*.

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On Appeal from Judgment of the United States District Court  
for the District of Columbia

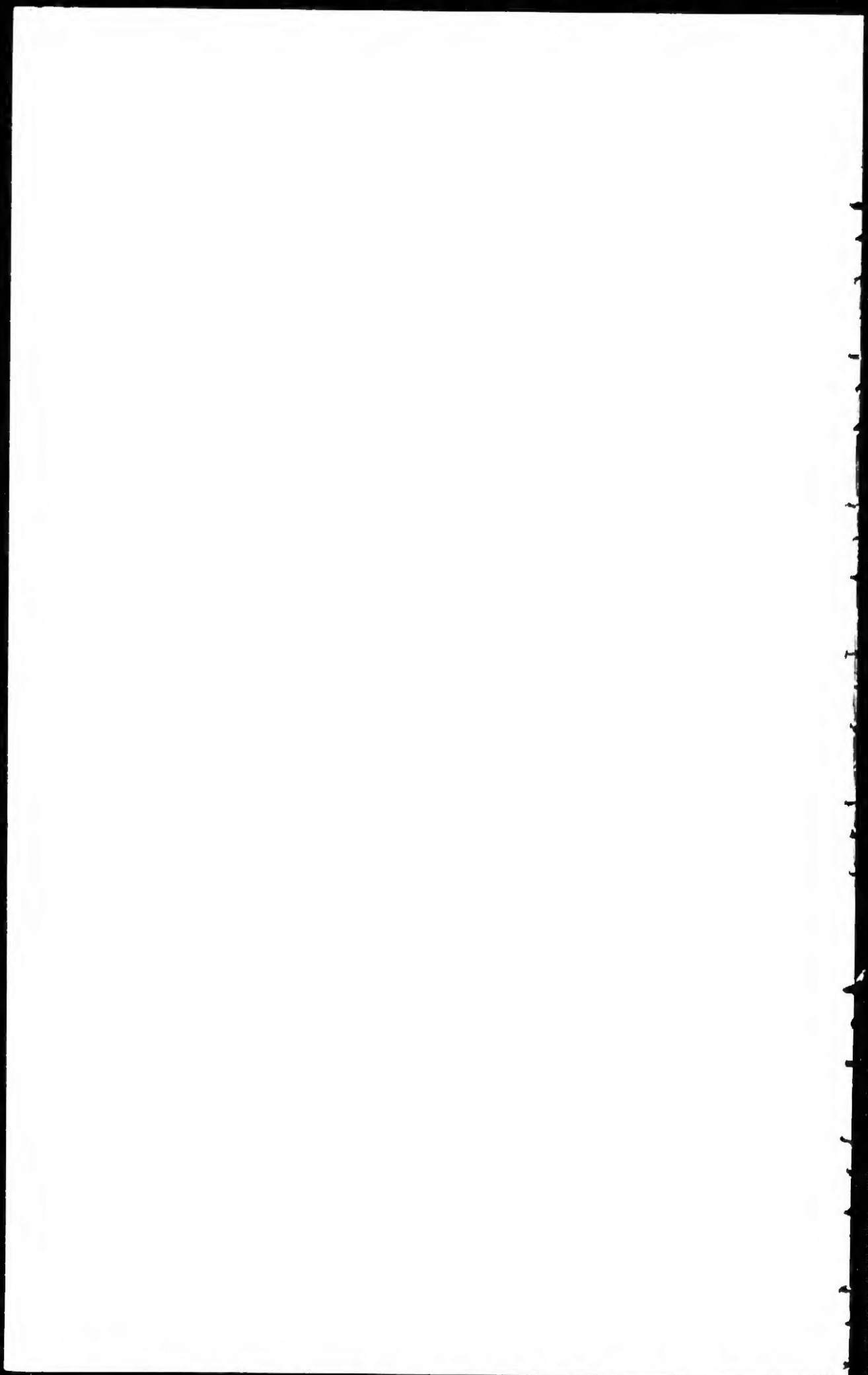
United States Court of Appeals  
for the District of Columbia Circuit

FILED JUN 15 1966

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ET AL., *Appellees*.

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On Appeal from Judgment of the United States District Court  
for the District of Columbia

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JOINT APPENDIX

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 142-66

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL.

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

\* \* \* \* \*  
**Complaint for Declaratory Judgment and Injunctive Relief**

1. This action arises under Public Law 88-108 (77 Stat. 132) and the Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C. §§ 151-160). The jurisdiction of this Court is grounded upon 28 U.S.C. §§ 1331, 1337, 2201 and 2202. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars.

2. Each of the plaintiffs named in the Caption to this complaint is either a corporation or an unincorporated association which engages in the transportation of freight and passengers by rail in interstate commerce, and was a party to the proceedings before Arbitration Board No. 282 under Public Law 88-108 pursuant to which an Award was rendered and filed in this Court in Misc. No. 41-63 or has otherwise been affected by the said Award.

3. Defendant Brotherhood of Railroad Trainmen (hereinafter referred to as the "BRT") is an unincorporated association and a labor organization which was a party to the proceedings before Arbitration Board No. 282.

4. Defendant Order of Railway Conductors and Brakemen (hereinafter referred to as the "ORCB") is an unincorporated association and a labor organization which was a party to the proceedings before Arbitration Board No. 282.

5. Defendant Switchmen's Union of North America (hereinafter referred to as the "SUNA") is an unin-

corporated association and a labor organization which was a party to the proceedings before Arbitration Board No. 282.

6. Defendant Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen (hereinafter referred to as "Local 584") is an unincorporated association and a local of the defendant BRT.

7. Certain employees of each of the plaintiffs are represented by the BRT, by the ORCB or by the SUNA with respect to certain matters to which Public Law 88-108, the Award by Arbitration Board No. 282 thereunder, and the Railway Labor Act relate. Local 584 represents certain employees of the plaintiff Washington Terminal Company with respect to such matters.

8. On November 2, 1959, each of the plaintiffs as well as most of the other railroads operating within the United States served upon the BRT, the SUNA and/or the ORCB written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. § 156) of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by the organizations so notified. Among other things, the carriers proposed, in the portion of such notices identified as "Consist of Road and Yard Crews" (attached as Exhibit A hereto), to eliminate all agreements, rules, regulations, interpretations and practices which required the use of a stipulated number of trainmen or more than one conductor on crews in any class of road service or which required the use of a stipulated number of brakemen or helpers or more than one conductor or foreman on crews in any class of yard, transfer or belt line services, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit A hereto.

9. On November 2, 1959, each of the plaintiffs as well as most of the other railroads operating within the United



States also served upon the Brotherhood of Locomotive Firemen and Enginemen and/or the Brotherhood of Locomotive Engineers written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. § 156) of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by those organizations. Among other things, the carriers proposed, in the portion of such notices identified as "Use of Firemen (Helpers) on Other than Steam Power" (attached as Exhibit B hereto), to eliminate all agreements, rules, regulations, interpretations and practices, however established, which required the use of firemen (helpers) on other than steam powered engines in freight or yard service, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit B hereto.

10. On September 7, 1960, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the ORCB, the BRT and/or the SUNA served upon each of the plaintiffs as well as most of the other railroads operating within the United States written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. § 156) of a proposed agreement affecting employees represented by such organizations. Among other things, the organizations proposed, in the portion of such notices and of the implementing proposals thereto identified as "Minimum Safe Crew Consist" (attached as Exhibit C hereto), to establish rules which, in general, would require the use of not less than one conductor and two trainmen on crews in road service, not less than one conductor (foreman) and two brakemen (helpers) on crews in yard, belt line and transfer service, and not less than one engineer (motorman) and one fireman (helper) in all classes of engine service, all as is more fully set forth in Exhibit C hereto.

11. Subsequent to the notices served under Section 6 of the Railway Labor Act (45 U.S.C. § 156), described in

paragraphs 8-10 above, the carriers and the organizations engaged in negotiations over the proposals made in such notices, both locally and on the national level, pursuant to the requirements of the Railway Labor Act. Among other things, a Presidential Railroad Commission was appointed by the President of the United States to investigate and report on the controversy and to use its best efforts, by mediation, to bring about a settlement. The report of the Presidential Railroad Commission, delivered to the President on February 28, 1962, recommended a basis for settlement of the dispute which the carriers agreed to accept but which the organizations rejected. After further negotiations on a national level under the auspices of the Chairman of the National Mediation Board failed to result in an agreement, the National Mediation Board sought to induce the parties to submit their dispute to arbitration pursuant to Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157, 158) as provided in Section 5 First (b) of the Act (45 U.S.C. § 155 First (b)), which request was accepted by the carriers but rejected by the organizations.

12. In *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963), the Supreme Court held that the notices served by the carriers on November 2, 1959, described in paragraphs 8-9 above, were proper under the Railway Labor Act, and that the carriers were free to implement the proposals made in such notices as the procedures provided in the Railway Labor Act for considering such proposals had been exhausted upon the refusal by the organizations to agree to arbitration, subject only to the possible creation of an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. § 160). An Emergency Board was appointed by the President of the United States under Section 10 to investigate and report concerning such dispute. The report of the Emergency Board was submitted to the President on May 13, 1963 and recommended a basis for settlement of the dispute which the carriers agreed to accept but which the organizations rejected.

13. Section 10 of the Railway Labor Act (45 U.S.C. § 160) provides, among other things, that:

“After the creation of such [emergency] board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.”

Following the expiration of the thirty-day period after the report of the Emergency Board to the President on May 13, 1963, the carriers could validly implement their notices of November 2, 1959 and were no longer required to observe the existing agreements, rules, regulations, interpretations and practices which they proposed to terminate in such notices. On the other hand, the organizations and their members also could resort to self-help, including strikes, to prevent the implementation of the carriers' notices of November 2, 1959 and to coerce the carriers into adopting the proposals made in the organizations' notices of September 7, 1960.

14. During the thirty-day period following the report of the Emergency Board and for some time thereafter, further national negotiations ensued with the assistance of the Secretary of Labor in which the Secretary proposed that the “firemen (helper)” and “crew consist” issues raised by the portion of the notices attached hereto as Exhibits A, B and C be submitted to binding arbitration under Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157, 158). When that proposal has been rejected by the organizations and all efforts to reach a settlement of the dispute otherwise had failed, so that a strike of the carriers by the organizations was imminent, the Congress enacted Public Law 88-108 (77 Stat. 132) on August 28, 1963.

15. Section 2 of Public Law 88-108 provided for the creation of a board of arbitration which subsequently became known as Arbitration Board No. 282. Section 3 provided



for the submission to Arbitration Board No. 282 of those portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960 which are attached hereto as Exhibits A, B and C, and further provided that the award by the board of arbitration "shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration." Section 4 provided that the arbitration should "be conducted pursuant to sections 7 and 8 of the Railway Labor Act," to the extent not inconsistent with Public Law 88-108, and that the "award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." Section 6 provided that the parties should "immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration" under Section 3 of Public Law 88-108.

16. Section 1 of Public Law 88-108 provided:

"That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored."

In consequence, the obligation of the carriers to observe the agreements, rules, regulations, interpretations and

practices which they proposed to terminate in their notices of November 2, 1959, which obligation had ended as alleged in paragraph 13 above, was reimposed subject to any changes made therein by the arbitration award pursuant to Sections 3 and 4 of Public Law 88-108 or in any agreements reached by the parties in the further negotiations required by Section 6 of Public Law 88-108 or otherwise.

17. As is more fully alleged in paragraphs 18 and 22 below, the agreements, rules, regulations, interpretations and practices which the carriers proposed to terminate in their notices of November 2, 1959 were changed in part by the arbitration award made pursuant to Sections 3 and 4 of Public Law 88-108 and by agreements reached in the further negotiations pursuant to Section 6 of Public Law 88-108. Moreover, Section 8 provided that Public Law 88-108 should "expire one hundred and eighty days after the date of its enactment," or on February 24, 1964, "except that it shall remain in effect with respect to the last sentence of Section 4 for the period prescribed in that sentence." Hence, the obligation reimposed upon the carriers by Section 1 of Public Law 88-108 to observe the agreements, rules, regulations, interpretations and practices which the carriers proposed to terminate in their notices of November 2, 1959 no longer exists, except insofar as such agreements, rules, regulations, interpretations and practices may have been readopted pursuant to the Award by Arbitration Board No. 282 or pursuant to agreements between a carrier or carriers and an organization or organizations.

18. The issues raised by the carriers' notices of November 2, 1959 and by the organizations' notices of September 7, 1960 which were not submitted to arbitration and as to which the parties were required by Section 6 of Public Law 88-108 to resume collective bargaining were settled in a national agreement reached on June 25, 1964. Arbitration Board No. 282 filed its Award, pursuant to Public Law 88-108, on November 26, 1963. The validity of its

Award was upheld by this Court. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (1964), aff'd, 331 F. 2d 1020 (D.C. Cir., 1964), cert. den., 377 U.S. 918 (1964). In so doing, the Court held, among other things, that the Award constituted a "complete and final disposition" of the issues raised by the portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960 submitted to Arbitration Board No. 282 and attached hereto as Exhibits A, B and C. The said notices of November 2, 1959 and September 7, 1960 have been completely disposed of, therefore, and no longer have any effect.

19. The effective date of the Award by Arbitration Board No. 282 was January 25, 1964. Section IV of the Award provided that it "shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." An agreement was reached between the carriers, on the one hand, and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, on the other hand, whereby the Award is to continue in force with respect to the parties to such agreement through March 31, 1966. An agreement was reached between certain eastern carriers and the BRT concerning the matters which are the subject of the "crew consist" provisions of the Award which agreement extends until January 1, 1970, and thereafter until changed in accordance with the provisions of the Railway Labor Act, and no employees of such carriers who have been affected by the Award are represented by the ORCB or the SUNA. No agreement has been reached between the plaintiff carriers and the BRT, ORCB or SUNA, and the Award ceases to continue in force as an award with respect to such carriers and organizations after January 25, 1966.

20. As a result of the expiration of the Award by Arbitration Board No. 282 on January 25, 1966 as between the plaintiff carriers and the defendant organizations, such

carriers and organizations, or any of them, may serve notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156) proposing changes in the rules and procedures established by or pursuant to the Award and may progress such notices through the procedures required by the Railway Labor Act until an agreement is reached or until those procedures have been exhausted. Until such time as an agreement is reached or the procedures required by the Railway Labor Act have been exhausted, however, the rules and procedures established by or pursuant to the Award continue in effect as required by the Railway Labor Act and Public Law 88-108.

21. In letters dated on or about January 7, 1966 from the BRT to most of the plaintiff carriers, the BRT gave "formal notice of our demand that the Carrier, immediately upon expiration of the Award of Arbitration Board 282 at 12:01 AM, January 26, 1966, shall proceed to take the necessary steps to arrange that the previous application of all crew consist rules under the effective agreements between the parties which were in force on January 24, 1964 (whether established by agreement, interpretation or practice) will be restored to full force and effect and complied with thereafter until and unless changed in accordance with the procedures of the Railway Labor Act, as amended." The BRT thus has taken the position that the agreements, rules, regulations, interpretations and practices which the plaintiff carriers proposed to terminate in the portion of their notices of November 2, 1959 attached hereto as Exhibit A once again become effective upon the expiration of the period in which the Award by Arbitration Board No. 282 continues in force as an award. Upon information and belief, the ORCB and the SUNA assert substantially the same position as that asserted by the BRT.

22. Section III of the Award by Arbitration Board No. 282 provided that no change should "be made in the scope

or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen . . . in any class of road service . . . or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service . . . , except by agreement, or pursuant to the provisions of this Award." Under the provisions of Section III, a carrier or organization may give written notice of proposed changes in any such stipulated number of trainmen used in any class of road service (with certain exceptions) or in any such stipulated number of brakemen or helpers used in any class of yard, transfer, or belt line service. If the parties fail to agree upon the proposed changes, a special board of adjustment may be convened to pass upon them in accordance with certain guidelines set forth in Section III of the Award by Arbitration Board No. 282. Pursuant to the procedures thus established by the Award of Arbitration Board No. 282, it has been determined by agreements and by awards of special boards of adjustment that thousands of unnecessary positions required to be filled by the rules in existence prior to the Award could be abolished by the plaintiff carriers, subject to the requirement in Section III-D of the Award that each road trainman and each yard brakeman or helper employed and not furloughed as of the effective date of the Award has a right to continued employment in road or yard service assignments for which he is qualified (if any are available in his seniority district) until retired, discharged for cause, or otherwise removed from employment by natural attrition.

23. The position of the BRT, ORCB and SUNA, as alleged in paragraph 21 above, if acceded to by the plaintiff carriers, would require such carriers on January 26, 1966 to restore many unnecessary positions which have been abolished pursuant to agreements or special board awards

as alleged in paragraph 22 above and to hire numerous new employees to replace those who have retired, been discharged for cause or otherwise removed from employment by natural attrition, which would be impossible as a practical matter as well as extremely costly; it would prevent such carriers from abolishing additional unnecessary positions which they have been permitted to abolish by agreement or by special board award when no longer necessary to provide employment to employees entitled to employment under the rules prescribed by Section III-D of the Award by Arbitration Board No. 282; and it would prevent such carriers from further invoking the procedures prescribed in Section III of the Award so as to authorize the abolition of positions which may hereafter be shown to be unnecessary under the guidelines set forth in Section III.

24. For the reasons alleged in paragraphs 8-20 above, among others, the plaintiff carriers have taken the position that the rules and procedures prescribed by the Award by Arbitration Board No. 282, including the protections for employees provided in Section III-D of that Award, continue in effect after January 25, 1966 and until such time as they have been changed by agreement or until the procedures required to be followed by the Railway Labor Act have been exhausted with respect to valid notices served under Section 6 of that Act (45 U.S.C. § 156) proposing changes in such rules and procedures. The plaintiff carriers, therefore, have rejected the demand made by the BRT as alleged in paragraph 21 above, and do not intend to reinstate the agreements, rules, regulations, interpretations or practices which they proposed to terminate in that portion of the notices served on November 2, 1959 attached hereto as Exhibit A and which were in effect prior to the effective date of the Award by Arbitration Board No. 282. An actual controversy therefore exists between the plaintiffs and the defendants as to the rules which will be in effect as of January 26, 1966 and thereafter.

25. The plaintiff carriers are informed and believe that the defendants BRT, ORCB, SUNA, and the locals (including the defendant Local 584), officers, members and agents thereof, will engage in strikes and work stoppages against the plaintiff carriers on January 26, 1966 or shortly thereafter for the purpose of coercing the said carriers into reinstating the rules in effect prior to the Award by Arbitration Board No. 282 and of preventing the said carriers from continuing to implement the rules and procedures prescribed by or pursuant to that Award. Such strikes and work stoppages would be in violation of the Railway Labor Act and Public Law 88-108.

26. If not restrained or enjoined by this Court, the illegal strikes and work stoppages alleged in paragraph 25 above, and the threats thereof would cause great and irreparable injuries to the plaintiffs and to the public. They would virtually paralyze the nation's rail transportation system, to the detriment of the national defense including the support of our armed forces in Viet Nam. The plaintiffs would be deprived of millions of dollars in operating revenues, would be unable to maintain their properties and to use their tracks, equipment and other physical properties in which they have substantial investments, would lose permanently to competing forms of transportation much business and revenue, and would be unable to fulfill their obligations under the Interstate Commerce Act. Many thousands of employees of the plaintiffs would be deprived of their positions for the duration of the strike or longer. Such strikes and work stoppages would greatly interfere with the transportation in interstate commerce of passengers, mail, freight and express lading (including Government mail and express, military personnel and material), and food and other lading essential to the public health and safety.

WHEREFORE, the plaintiffs pray that this Court (1) adjudge and declare that the rules and procedures pre-



scribed by or pursuant to the Award by Arbitration Board No. 282 continue in effect until changed by agreement or until the procedures provided by the Railway Labor Act have been exhausted with respect to valid notices served under Section 6 (45 U.S.C. § 156) of that Act proposing changes in such rules and procedures; (2) grant to the plaintiffs temporary and permanent injunctive relief restraining the defendants, their officers, agents, employees, members and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages or from picketing the premises of the plaintiffs in connection with the dispute or controversy alleged herein; and (3) grant to the plaintiffs their costs and such other and further relief as may be necessary or proper in the circumstances.

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*Attorney for plaintiffs*

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*Of Counsel for plaintiffs*

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#### EXHIBIT A

##### Consist of Road and Yard Crews

A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of

(i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) or more than one conductor in any crew used in any class



of road service, including all miscellaneous and unclassified services,

(ii) a stipulated number of brakemen or helpers or more than one conductor or foreman in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply, or

(iii) a conductor or trainman in connection with the movement of light engines or in pusher or helper service, or an engineer, conductor or trainman in pilot service.

**B. Establish a rule to provide that**

1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.

2. Management shall also have the unrestricted right, under all circumstances, to determine when and if more than one conductor shall be used in any crew employed in any class of road service, including all miscellaneous and unclassified services; and when and if more than one conductor or foreman shall be used in any crew employed in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply; and when and if a conductor, trainman or yardman will be used in connection with the movement of light engines and in helper and pusher service, and when and if

an engineer, conductor, trainman or yardman will be used in pilot service.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

#### EXHIBIT B

##### Use of Firemen (Helpers) on Other Than Steam Power

A. Eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous and unclassified services) or in any class of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

B. Establish a rule to provide that

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous and unclassified services) and in all classes of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

#### EXHIBIT C

##### Minimum Safe Crew Consist

Establish rules or agreements to provide:

A. Crews in all classes of road train service shall consist of not less than one (1) conductor and two (2) trainmen

and such additional employees as are required to assure maximum safety.

B. Train and yard crews in yard, belt line and transfer service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers) and such additional employees as are required to assure maximum safety.

C. Crews in all classes of engine service shall consist of not less than one (1) engineer (motorman) and one (1) fireman (helper) and such additional employees as are required to assure maximum safety.

**Notice of Dismissal by Certain Plaintiffs**

To: Milton Kramer, Esq.

Schoene & Kramer

1625 K Street, N. W.

Washington, D. C.

Attorney for defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen.

James D. Hill, Esq.

Armour, Herrick, Kneipple & Allen

1001 Fifteenth Street, N. W.

Washington, D. C.

Attorney for defendant Order of Railway Conductors and Brakemen.

Please Take Notice that, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, the above-entitled action is dismissed without prejudice by the plaintiffs listed below:

• • • • •

The action as brought by all the remaining plaintiffs shall remain pending against all defendants.

Dated: February 3, 1966

RICHARD T. CONWAY  
Shea & Gardner  
734 Fifteenth Street, N. W.  
Washington, D. C. 20005  
*Attorney for the plaintiffs.*

---

**Answer and Counterclaim of Defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America, and Bill Doak Lodge Division 584**

Come now the above-named defendants and for Answer to the Complaint, say:

**FIRST DEFENSE**

The Complaint fails to state a claim on which relief may be granted.

**SECOND DEFENSE**

The Court is without jurisdiction to grant injunctive relief to plaintiffs in this action.

**THIRD DEFENSE**

Plaintiffs have refused to negotiate with the Brotherhood of Railroad Trainmen concerning proposals of said defendant for new crew consist rules to become effective upon the expiration of the Award of Arbitration Board No. 282 and have refused to participate in mediation concerning said proposals when requested so to do by the National Mediation Board, and in accordance with section 8 of the Norris-LaGuardia Act (29 U.S.C., § 108) may not be granted injunctive relief.

## FOURTH DEFENSE

Answering the allegations of the several paragraphs of the Complaint, these defendants say:

1. They deny the allegations of the first sentence of paragraph 1 and admit the allegations of the third sentence. The allegations of the second sentence consist of conclusions of law not requiring answer.

2. They admit that each of the plaintiffs is either a corporation or an unincorporated association which engages in the transportation by rail of freight or passengers or both in interstate commerce. They deny the remaining allegations of paragraph 2 except that they admit that each of the plaintiffs whose name appears on Appendix A to this Answer and Counterclaim was a party to the proceedings before Arbitration Board No. 282 under Public Law 88-108 with respect to one or more of these defendants.

3-6. They admit the allegations of paragraphs 3 through 6.

7. They admit that each of the plaintiffs which has not heretofore been dismissed from this action, with the exception of those whose names appear on Appendix B to this Answer, has certain employees represented by the BRT or the SUNA with respect to certain matters to which Public Law 88-108, the Award of Arbitration Board No. 282 thereunder, and the Railway Labor Act relate, and deny the remaining allegations of paragraph 7.

8. They admit that on or about November 2, 1959, each of the plaintiffs which has not heretofore been dismissed from this action, with the exception of those whose names appear on Appendix C to this Answer, and some other railroads operating within the United States, served upon the BRT or the SUNA or both written notice pursuant to section 6 of the Railway Labor Act of proposed changes as alleged in the first sentence of paragraph 8, and deny the

remaining allegations of said sentence. They admit that Exhibit A to the Complaint is a copy of that part of that notice identified as "Consist of Road and Yard Crews", and deny the remaining allegations of paragraph 8.

9. They admit that Exhibit B to the Complaint is a copy of that portion of a section 6 notice identified as "Use of Firemen (Helpers) on other than Steam Power" served by many railroads on the BLF&E or the BLE, and are without knowledge or information sufficient to form a belief concerning the remaining allegations of paragraph 9. Said unions are not parties to this action.

10. They admit that on or about September 7, 1960 the unions named in the first sentence of paragraph 10 served upon the remaining plaintiffs, other than those whose names appear on Appendix D to this Answer, and on a number of other railroads, a written notice as alleged in the first sentence of paragraph 10, and deny the remaining allegations of said sentence. They admit that Exhibit C to the Complaint is a copy of the portion of said notice identified as "Minimum Safe Crew Consist", and deny the remaining allegations of paragraph 10.

11. They admit the allegations of the first sentence of paragraph 11. They admit that a Presidential Railroad Commission was appointed to investigate and report on the controversy and to assist in achieving an amicable settlement with respect to the issues, and deny the remaining allegations of the second sentence. They admit that the report of the Presidential Railroad Commission was delivered to the President, deny that it was delivered on February 28, 1962 and allege that it was delivered on February 26, 1962, admit that it recommended a basis for settlement of the dispute, and deny the remaining allegations of the third sentence. They deny that the National Mediation Board sought to induce the parties to submit their dispute to arbitration, admit there were further negotiations on a national level with the assistance of the

National Mediation Board which failed to result in an agreement, and deny the remaining allegations of paragraph 11.

12. The first sentence of paragraph 12 consists of plaintiff's characterization of an opinion of the Supreme Court; these defendants refer this Court to that opinion for its holding. They admit the allegations of the second sentence. They admit the report of the Emergency Board was submitted to the President on May 13, 1963, and recommended a basis for settlement of the dispute, and deny the remaining allegations of paragraph 12.

13. They admit the allegations of the first sentence of paragraph 13. The remainder of said paragraph consists of conclusions of law not requiring answer.

14. They admit the allegations of the first sentence of paragraph 14. They admit that all efforts to reach a settlement of the dispute had theretofore failed, admit that a strike of the carriers by the organizations was announced if the carriers, as they threatened, unilaterally put in effect their proposals of November 2, 1959, allege that to prevent such unilateral action by the carriers and its consequent strike the Congress enacted Public Law 88-108 of August 28, 1963, and deny the remaining allegations of paragraph 14.

15. They admit that the quotations in paragraph 15 from Public Law 88-108 are accurate quotations. The remainder of paragraph 15 consists of plaintiffs' characterization of portions of Public Law 88-108 which are not allegations of fact and do not require answer.

16. They admit that section 1 of Public Law 88-108 is accurately quoted. They deny that Public Law 88-108 made any changes in any agreements, rules, regulations, interpretations, and practices. The remainder of paragraph 16 consists of conclusions of law not requiring answer.

17. They deny the allegations of the first sentence of paragraph 17. They admit the allegations of the second sentence of paragraph 17, and deny the remaining allegations of said paragraph.

18. They admit the first three sentences of paragraph 18. The fourth sentence consists of a description of part of a decision of this Court, not requiring answer. The allegations of the last sentence of paragraph 18 are allegations of law not requiring answer.

19. They admit the first three sentences of paragraph 19. They allege that BRT has entered into agreements with 32 major railroads, principally eastern carriers but also others, including the two largest carriers in the country, and including some of the plaintiffs, prescribing a new crew consist rule to become effective January 25, 1966, and to remain in effect until January 1, 1970 and thereafter until changed in accordance with the procedures of the Railway Labor Act; they allege that similar agreements have been made with other railroads under the procedure initiated by Award 282; except as hereinabove alleged, they deny the allegations of the fourth sentence. They admit that the Award of Arbitration Board No. 282 ceased to exist after January 25, 1966; they do not understand the remaining allegations of paragraph 19 and therefore deny them.

20. The first sentence of paragraph 20 consists of a statement of position of the carriers on certain legal questions. These defendants deny that said statement of position is sound, and deny it. These defendants aver that any of the carriers and any of the organizations were at any time and are permitted to serve notices under section 6 of the Railway Labor Act (45 U.S.C. § 156) to propose changes in rules governing so-called crew consist and to progress such rules through the procedures of the Railway Labor Act. The second sentence of paragraph 20 consists of a statement by the carriers of their position that the rules and procedures of the Award of Arbitration Board No.



282 continue in effect after the expiration of the Award of that Board; these defendants deny that said position is sound, and deny it. They allege that upon the expiration of the Award of Arbitration Board No. 282 the rules and procedures contained therein expired and ceased to have further effect and that the rules and procedures in effect prior to the Award again became governing.

21. They admit the allegations of the first sentence of paragraph 21 with respect to those carriers whose names appear on Appendix E to this Answer, and deny the remaining allegations of said sentence. They admit that these defendants take the position that the agreements, rules, interpretations, and practices in effect prior to the effective date of the Award automatically again became governing, unaffected by the Award, upon the expiration of the Award on January 25, 1966, as provided by said Award and by Public Law 88-108 except where a carrier and an organization has made an agreement establishing new rules to remain in effect until changed in accordance with the procedures of the Railway Labor Act, and they deny the remaining allegations of paragraph 21. Appendix F to this Answer is a list of carriers which have made such agreements with these defendants. Appendix G to this Answer is a list of names of carriers on which crew consist has not been changed under Award 282.

22. The first three sentences of paragraph 22 consist of plaintiffs' characterization of a portion of the Award; these defendants refer the Court to the Award for the contents thereof. They deny the remaining allegations of paragraph 22.

23. They admit that the rules which BRT and SUNA take the position are now in effect require many of the plaintiff carriers to hire sufficient additional employees to comply with said rules, prevent such carriers from abolishing positions when not permitted by such rules or by subsequent agreement, and prevent such carriers from further invoking

the procedures prescribed in Section III of the Award which expired on January 25, 1966, and they deny the remaining allegations of paragraph 23.

24. They admit that the plaintiffs take the position stated in the first sentence of paragraph 24, and deny the remaining allegations of said sentence. They are without knowledge or information sufficient to form a belief concerning the second sentence. They admit that an actual controversy exists between BRT and SUNA on the one hand and on the other hand those plaintiffs in whose favor awards were made by Special Boards of Adjustment under section III of the Award of Arbitration Board 282 and deny that a justiciable controversy exists with respect to the other plaintiffs.

25. They deny the allegations of paragraph 25.

26. They deny that the supposed strikes referred to in paragraph 25 of the Complaint, if they occurred, would be illegal; admit they would cause injury to the plaintiffs on which such strikes occurred; admit that such plaintiffs would be deprived of most of their operating revenues and would be unable to perform in full their transportation obligations; and deny the remaining allegations of paragraph 26.

Wherefore, these defendants pray that the Complaint against them be dismissed.

#### COUNTERCLAIM

Come now the Brotherhood of Railroad Trainmen and Switchmen's Union of North America, and for their counterclaim, show:

27. This counterclaim arises under United States Code, Title 45, Section 152, First and Seventh and Section 156. This Court has jurisdiction of this counterclaim under United States Code, Title 28, Sections 1331 and 1337. The

matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs.

28. They incorporate all the statements made in the foregoing Answer as though restated herein.

29. For many years there have been in effect between the counterclaimants and the plaintiffs certain agreements made and maintained under the Railway Labor Act, commonly known in the railroad industry as "schedule agreements". Such agreements, as supplemented and revised from time to time, contain rules, commonly referred to as "schedule rules", governing the working conditions and conditions of employment of plaintiffs' employees represented by counterclaimants.

30. Among the schedule rules there are some which govern the number of brakemen and yardmen to be assigned to the several train crews engaged in road and yard service. In conjunction with such rules, practices have also developed over the years which supplement and determine the application of the rules. Such rules and practices are commonly known as "crew consist" rules and practices.

31. Under the provisions of the Railway Labor Act carriers are prohibited from changing rates of pay, rules, or working conditions in agreements except through the procedures specified in that Act or by mutual agreement with the representative of the employees involved. (45 U.S.C. Sec. 152 Seventh, Sec. 156).

32. On August 28, 1963 under emergency conditions posed by the prospect of a national railroad strike that would have resulted from the carriers unilaterally putting in effect certain changes they had proposed and which had been processed through the procedures of the Railway Labor Act, Congress enacted Public Law 88-108 (77 Stat. 129) to provide procedures for putting to rest for a period of time the issues underlying the prospective strike. So far as here pertinent the Law provided for the establish-

ment of an arbitration board which would determine the terms on which those issues would be put to rest for a time. Among the issues so to be considered and temporarily decided were issues between the counterclaimants and the plaintiffs as to respective changes each had proposed with respect to crew consist rules and practices.

33. The Award of the aforesaid arbitration board (identified as Arbitration Board No. 282) was filed in this Court on November 26, 1963 and pursuant to the provisions of P.L. 88-108 became effective 60 days later on January 25, 1964; the Award fixed its duration at two years from the effective date, the maximum period allowed under the terms of P.L. 88-108. Accordingly the Award expired on January 25, 1966.

34. The Award established certain procedures and standards under which determinations might be made on individual carriers permitting the use under defined circumstances, during the period of the Award's effectiveness, of train crews consisting of fewer employees than were required by the crew consist rules of the schedule agreement. Pursuant to the procedures thus provided, most of the plaintiffs proposed to the General Chairmen of BRT and SUNA on such carriers certain reductions in described train crews.

35. Confronted with the pressures of the procedures required under the Award, the General Chairmen of BRT and SUNA entered into agreements with the plaintiffs whose names appear on Appendix H setting forth the terms and conditions under which such plaintiffs would for the duration of the Award, and terminating with the expiration of the Award, be permitted to depart from the crews consisting of fewer employees than were required practices thereunder. On other plaintiff carriers agreements could not be reached and pursuant to the procedures of section III of the Award of Arbitration Board No. 282 special boards of adjustment were invoked which boards made awards with respect to such carriers permitting such

carriers for the duration of the Award of Board No. 282 to depart from the crew consist requirements of the schedule rules and practices thereunder; the names of such carriers appear on Appendix I to this Counterclaim. Other plaintiff carriers, whose names appear on Appendix J, were not parties to the Award of Arbitration Board No. 282 because not subject to P.L. 88-108 but agreements were entered into with such carriers permitting specified departures from the crew consist requirements of the schedule rules and practices thereunder for the same period as such departures would be permitted by awards of special boards of adjustment under Section III of the Award of Arbitration Board No. 282,

36. Notwithstanding the facts hereinbefore shown, the aforesaid plaintiffs have failed and refused to observe the requirements of the crew consist rules of their schedule agreements and practices with respect thereto, after permission to depart therefrom expired on January 25, 1966 and have repudiated their obligations under said rules and practices, all in flagrant violation of the express commands of Section 2, Seventh and Section 6 of the Railway Labor Act.

37. The conduct of the carriers aforesaid irreparably deprives counterclaimants of their rights to have the Railway Labor Act and agreements pursuant thereto observed and complied with and is in derogation of the public interest to have labor relations in the railroad industry conducted in accordance with the mandates of Congress.

Wherefore, counterclaimants pray:

(1) That this Court issue its order of injunction prohibiting the plaintiffs from continuing the conduct herein complained of, and requiring the plaintiffs forthwith to give effect to and comply with all crew consist rules of the schedule agreement and practices with respect thereto unless and until such rules or practices are changed in accordance with the procedures of the Railway Labor Act.

(2) That counterclaimants be accorded such other and further relief, including costs and reimbursement to employees represented by the counterclaimants for any loss of earnings opportunities of which plaintiffs have wrongfully deprived them, as this Court may determine to be meet and proper.

Respectfully submitted,

MILTON KRAMER  
MARTIN W. FINGERHUT

SCHOENE AND KRAMER  
1625 K Street, N.W.  
Washington, D. C. 20006

February 16, 1966

• • • • •

**First Amendment to Answer**

1. Comes now the defendants other than the Order of Railway Conductors and Brakemen, and, by leave of court, files their First Amendment to Answer in the above entitled cause, and hereby amends said answer as follows:

a. By striking from Appendix E, Appendix F, and Appendix H the words "Kansas City Southern Railway Company" and the words "Louisiana & Arkansas Railway Company" and

b. By adding two new paragraphs 21A and 21B to said answer, as follows:

"21A. Confronted by the pressures of the procedures required by the Award of Board 282, the defendant BRT made an agreement with plaintiff Kansas City Southern Railway Company and plaintiff Louisiana & Arkansas Railway Company, dated September 4, 1964, setting forth the terms and conditions under which said plaintiffs would be permitted to depart from requirements of crew consist

rules, agreements, and practices in effect on the day preceding the effective date thereof, October 1, 1964. Said agreement of September 4, 1964 further provided that it does not affect such pre-existing rules, agreements, and practices except for the period said agreement of September 4, 1964 remains in effect, and that said agreement of September 4, 1964 shall remain in effect only until January 25, 1966.

"21B. By virtue of the express provisions of said agreement of September 4, 1964, the rules, agreements, and practices in effect before October 1, 1964, are again in effect, are governing and controlling, and must be complied with and enforced as to said plaintiff Kansas City Southern Railway Company and plaintiff Louisiana & Arkansas Railway Company. Said plaintiffs failed and refused so to do, whereupon the Brotherhood of Railroad Trainmen brought an action against said plaintiffs in the United States District Court for the Western District of Missouri, Western Division, to require them to do so and is now pending in that Court. *Brotherhood of Railroad Trainmen v. The Kansas City Southern Railway Co., et al.*, Civil Action No. 15860-4. The issues presented in that action are not presented in this action."

Respectfully submitted,

MILTON KRAMER  
LESTER P. SCHOENE

SCHOENE AND KRAMER  
1625 K Street, N.W.  
Washington, D. C. 20006

February , 1966



**Reply by Plaintiffs to Counterclaim of Defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America, and Bill Doak Lodge Division 584**

The plaintiffs herein reply to the Counterclaim in the Answer and Counterclaim by the defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America, and Bill Doak Lodge Division 584 (hereinafter referred to collectively as the "counterclaimants"), as follows:

**FIRST DEFENSE**

The counterclaim fails to state a claim against plaintiffs upon which relief can be granted.

**SECOND DEFENSE**

1. The allegations of the first and second sentences of paragraph 27 are conclusions of law which do not require an answer. The allegations of the third sentence of paragraph 27 are admitted.

2. In paragraph 28, counterclaimants "incorporate all the statements made in the foregoing Answer as though restated herein." Accordingly, plaintiffs reallege, as though stated in full herein, every allegation of their Complaint in reply to the counterclaimants' counterclaim, and reply to affirmative allegations in said Answer as follows:

a. The averments in the First, Second and Third Defenses are denied.

b. The allegations as to the purposes of the Congress in enacting Public Law 88-108, in the second sentence in paragraph 14 of the Fourth Defense, are neither accurate nor complete and are denied.

c. It is admitted that the BRT has entered into agreements with some railroads, principally eastern carriers, prescribing a new crew consist rule to become effective January 25, 1966, and to remain in effect until January 1, 1970 and thereafter until changed in accordance with the procedures of the Railway Labor Act, and that agreements have been made with other railroads under the procedures



provided by Award 282. The allegations in the second sentence of paragraph 19 of the Fourth Defense otherwise are denied.

d. The averments in the third and fifth sentences of paragraph 20 of the Fourth Defense are denied.

e. It is denied that the lists referred to in the third and fourth sentences of paragraph 21 of the Fourth Defense are completely accurate.

f. It is admitted that the BRT made an agreement with the Kansas City Southern Railway Company and the Louisiana and Arkansas Railway Company, dated September 4, 1964, modifying or changing certain crew consist agreements, rules and practices pursuant to the Award by Arbitration Board No. 282, and the Court is referred to said agreement for its terms. The allegations in paragraph 21A of the Fourth Defense otherwise are denied.

g. It is admitted that *Brotherhood of Railroad Trainmen v. The Kansas City Southern Railway Co. and Louisiana & Arkansas Railway Co.*, Civil Action No. 15860-4, was brought in the United States District Court for the Western District of Missouri, Western Division, on or after January 26, 1966, and is now pending in that Court, and that the BRT in that action has requested an injunction mandating the two defendant carriers to restore or reinstate the crew consist agreements, rules and practices which were modified pursuant to the Award by Arbitration Board No. 282, and prohibiting the said carrier defendants from continuing to apply the crew consist rules established pursuant to that Award. It is alleged that the issue thus raised in the Missouri action had previously been raised in this proceeding and will be governed by the decision in this proceeding, and that the defendants in the Missouri action have moved for a stay of that proceeding pending the decision herein. The allegations in paragraph 21B of the Fourth Defense otherwise are denied.

3. It is admitted that for many years there have been in effect certain agreements between the counterclaimants and

the plaintiffs, made and maintained under the Railway Labor Act, which agreements sometimes are referred to as "schedule agreements"; that such agreements, as supplemented and revised from time to time, contain rules, which rules sometimes are referred to as "schedule rules"; and that the working conditions and conditions of employment of employees of the plaintiffs represented by the counterclaimants are in part governed by such schedule rules. The allegations of paragraph 29 otherwise are denied.

4. It is admitted that prior to the effective date of the Award by Arbitration Board No. 282 there were on some railroads schedule rules which governed the number of brakemen and yardmen assigned to train crews in road and yard service, but it is alleged that most of those rules have been modified or superseded by awards of special boards of adjustment or agreements pursuant to Section III of the Award by Arbitration Board No. 282. The allegations of paragraph 30 otherwise are denied.

5. The allegations of paragraph 31 constitute conclusions of law which need not be answered. The provisions of the Railway Labor Act (45 U.S.C. § 151 et seq.) are referred to for their content and purport.

6. It is admitted that on August 28, 1963, Congress enacted Public Law 88-108 (77 Stat. 132); that at that time a strike of many carriers (including many of the plaintiffs) by certain labor organizations (including the counterclaimants) was imminent; that the carriers intended to implement certain changes in crew consist rules which the carriers had proposed, which proposed changes had been processed through the procedures of the Railway Labor Act; and that Public Law 88-108 provided (among other things) for the establishment of an arbitration board to determine the issues between the carriers and the organizations specified in Section 3 of Public Law 88-108. The allegations of paragraph 32 otherwise are denied.

7. It is admitted that the Award of the Arbitration Board established pursuant to Public Law 88-108 (identified as Arbitration Board No. 282) was filed in this Court on November 26, 1963; that under the provisions of Public Law 88-108 the effective date of the Award was January 25, 1964; that pursuant to the provisions of Public Law 88-108, the Arbitration Board provided in Section IV of its Award that "[t]his Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise"; and that on January 25, 1966, the Award ceased to continue in force as an award with respect to the plaintiffs parties to the Award and the counterclaimants. The allegations of paragraph 33 otherwise are denied.

8. It is admitted that the Award established certain procedures and standards under which determinations might be made on individual carriers permitting the use of train crews consisting of fewer employees than had been required by crew consist rules in effect immediately prior to the effective date of the Award, and that pursuant to the procedures thus provided, most of the plaintiffs proposed to the BRT and the SUNA certain reductions in described train crews. The allegations of paragraph 34 otherwise are denied.

9. It is admitted that the carriers listed in Appendix H to the Counterclaim entered into local agreements with either the BRT or the SUNA pursuant to Section III, Part A, of the Award by Arbitration Board No. 282, which modified or superseded crew consist rules and practices in effect immediately prior to the effective date of the Award by Arbitration Board No. 282. The allegations of the first sentence of paragraph 35 otherwise are denied. It is admitted that similar agreements could not be reached by some of the plaintiff carriers listed in the Appendix I to the Counterclaim; that special boards of adjustment were then convened pursuant to Section III, Part B, of the Award by Arbitration Board No. 282; and that pursuant to Sec-

tion III, Parts B and C, of the Award by Arbitration Board No. 282 such special boards of adjustment rendered awards which modified or superseded crew consist rules and practices in effect immediately prior to the effective date of the Award by Arbitration Board No. 282. The allegations of the second sentence of paragraph 35 otherwise are denied. It is admitted that some of the carriers listed in Appendix J to the Counterclaim were not parties to the Award by Arbitration Board No. 282, and that such carriers entered into agreements with either the BRT or the SUNA. The Court is referred to such agreements for their terms, which are not summarized with complete accuracy in the last sentence of paragraph 35. The allegations of the last sentence of paragraph 35 otherwise are denied.

10. It is admitted that the plaintiffs are continuing to use train crews consisting of numbers of employees determined in accordance with the agreements and awards referred to in the preceding paragraph 9 of this reply and not in accordance with previously existing crew consist rules and practices which were superseded by such agreements and awards. The allegations of paragraph 36 otherwise are denied.

11. The allegations of paragraph 37 are denied.

WHEREFORE, plaintiffs pray that the counterclaim against them be dismissed, and that they be allowed their costs and such other and further relief as may be necessary or proper in the premises.

RALPH J. MOORE, JR.  
SHEA & GARDNER  
734 Fifteenth Street, N.W.  
Washington, D. C. 20005  
*Attorney for Plaintiffs.*

SHEA & GARDNER  
734 Fifteenth Street, N.W.  
Washington, D. C. 20005  
*Of Counsel for Plaintiffs.*

**Motion by Plaintiffs for a Temporary Restraining Order**

Plaintiffs hereby move, by and through counsel, that the Court enter a temporary restraining order restraining the defendants, each of the lodges, divisions, officers, agents, employees and members of any of the defendants, and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of the plaintiffs over any dispute as to the agreements, rules, regulations, interpretations and practices to be applied by the plaintiffs upon the expiration of the Award by Arbitration Board No. 282, pending hearing and determination of the Motion by Plaintiffs for A Preliminary Injunction.

The grounds for this action is that immediate and irreparable damage, loss and injury will result to plaintiffs and to the public before notice can be served and a hearing had on the Motion by Plaintiffs for a Preliminary Injunction, as more fully appears from the Affidavit by James E. Wolfe filed herewith.

Respectfully submitted,

FRANCIS M. SHEA  
SHEA & GARDNER  
734 Fifteenth St., N. W.  
Washington, D. C. 20005  
*Attorney for Plaintiffs.*

January 24, 1966

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**Temporary Restraining Order**

This matter came on to be heard upon the Motion by Plaintiffs for a Temporary Restraining Order, supported by an Affidavit by James E. Wolfe, from which it appears that the defendants Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, Switchmen's Union of North America and Bill Doak Lodge 584, Brother-

hood of Railroad Trainmen, may be threatening to engage in strikes or work stoppages against the plaintiffs and that such strikes and work stoppages will cause immediate and irreparable injury, loss and damages before notice can be served and a hearing had on the Motion by Plaintiffs for A Preliminary Injunction, in that the said plaintiffs, which constitute most of the nation's Class I railroads, if the strikes and work stoppages are not restrained would be forced to suspend the transportation of passengers and freight, with the consequences that the plaintiffs will be deprived of many millions of dollars in revenues for each day the strike continues, many of their employees will be deprived of their employment and wages for the duration of the strike, many businesses will be deprived of essential transportation services, and railroad transportation in the United States may be paralyzed so as to seriously impede or interrupt altogether the transportation of passengers, mail, freight and express lading, the products of industry, food, medicine and other lading essential to the public health, safety and welfare, including the transportation of military personnel and defense materials and supplies essential to the national defense and to the support of the military effort in Viet Nam.

IT IS THEREFORE ORDERED that the defendant Brotherhood of Railroad Trainmen, the defendant Order of Railway Conductors and Brakemen, the defendant Switchmen's Union of North America, the defendant Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, and each of the lodges, divisions, locals, officers, agents, employees and members of any of the aforesaid defendants, and all persons acting in concert with them, be, and they hereby are temporarily restrained from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of the plaintiffs over any dispute as to the agreements, rules, regulations, interpretations or practices to be applied by

the plaintiffs or any of them upon the expiration of the Award by Arbitration Board No. 282; and it is further

ORDERED that this temporary restraining order is granted on the condition that a bond in the sum of \$10,000.00 be filed to make good such damages not to exceed said sum as may be suffered or sustained by any party who is found to be wrongfully enjoined or restrained; and it is further

ORDERED that the defendants be and they are hereby directed to show cause before this Court at 10 o'clock A.M. on January 31, 1966 at Constitution Avenue and John Marshall Place, N.W., Washington, D. C., why the Motion by Plaintiffs for A Preliminary Injunction should not be granted; and it is further

ORDERED that this temporary restraining order shall expire at 4:00 P.M. on the 3d day of February, 1966 unless it is further extended by order of this Court; and it is further

ORDERED that this order may be served by any person over the age of twenty-one years, not a party to this proceeding, selected for the purpose by the plaintiffs or any of them.

/s/ ALEXANDER HOLTZOFF

*United States District Judge*

Dated: January 24, 1966  
10:55 A.M.

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**Order Extending and Amending Temporary Restraining Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation,

IT IS HEREBY ORDERED:

(1) That the Temporary Restraining Order dated and entered in this cause on January 24, 1966 is extended, with the consent of the defendants, so that it shall expire at



4:00 P.M. on March 16, 1966, unless it is further extended by order of this Court.

(2) That the first ordering paragraph of said Temporary Restraining Order is amended to read as follows:

"IT IS THEREFORE ORDERED that the defendant Brotherhood of Railroad Trainmen, the defendant Order of Railway Conductors and Brakemen, the defendant Switchmen's Union of North America, the defendant Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, and each of the lodges, divisions, locals, officers, agents, employees and members of any of the aforesaid defendants, and all persons acting in concert with them, be, and they hereby are temporarily restrained from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of the plaintiffs over any dispute relating to the effect of the expiration of the period in which the Award by Arbitration Board No. 282 shall continue in force, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108, upon the agreements, rules, regulations, interpretations or practices to be applied by the plaintiffs or any of them after the expiration of such period.

(3) That the third ordering paragraph of the said Temporary Restraining Order is revoked.

ALEXANDER HOLTZOFF  
*United States District Judge*

January 27, 1966



**Pretrial Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation,

**IT IS HEREBY ORDERED:**

(1) That oral argument will be heard by the Court, at 10:00 A.M. on February 24, 1966, upon the two following issues: (a) the effect of the expiration of the period in which the Award by Arbitration Board No. 282 shall continue in force as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108; and (b) whether or not the Norris-La Guardia Act is applicable to the plaintiffs' request for injunctive relief.

(2) That Plaintiffs' Memorandum of Points and Authorities in Support of Motion for A Preliminary Injunction shall be deemed to constitute plaintiffs' initial memorandum of points and authorities with respect to the issues specified in paragraph (1) hereof.

(3) That each of the defendants shall file its memorandum of points and authorities with respect to the issues specified in paragraph (1) hereof on or before February 11, 1966.

(4) That the plaintiffs shall file any reply to the memoranda filed pursuant to paragraph (3) hereof on or before February 21, 1966.

(5) That each of the defendants shall file its answer to the Complaint on or before February 14, 1966.

(6) That the trial upon the Complaint shall commence at ..... on March 8, 1966.

*United States District Judge*

January 27, 1966

**Order Amending Pretrial Order and Extending Temporary Restraining Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation,

**IT IS HEREBY ORDERED:**

(1) That paragraph (6) of the Pretrial Order dated and entered in this cause on January 27, 1966 is amended to provide that the trial upon the Complaint shall commence on March 21, 1966.

(2) That the Temporary Restraining Order dated and entered in this cause on January 24, 1966 as extended and amended by the Order Extending and Amending Temporary Restraining Order dated and entered in this cause on January 27, 1966 is further extended, with the consent of the defendants, so that it shall expire at 4:00 P.M. on March 29, 1966, unless otherwise provided by order of this Court.

*United States District Judge*

Dated: February 25, 1966

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**Order**

Upon oral motion of the plaintiffs, by and through counsel, and it appearing to the Court that for the convenience of the parties a separate trial herein should be ordered for all claims by the plaintiffs against the defendant Order of Railway Conductors and Brakemen,

**IT IS HEREBY ORDERED**, that all claims by the plaintiffs against the defendant Order of Railway Conductors and Brakemen be, and they hereby are, set for separate trial on April 19, 1966.

*United States District Judge*

Dated: March 23, 1966.

**Award of Arbitration Board 282**

**In Dispute Between Railroads and Operating Brotherhoods  
Involving Helper (Firemen) and Crew-Consist Issues**

BEFORE THE  
ARBITRATION BOARD

Established by Joint Resolution of Congress

Approved August 28, 1963

Public Law 88-108

National Mediation Board

Arbitration Board No. 282

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN,  
AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES

and

CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHER-  
HOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCO-  
MOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY  
CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF RAILROAD  
TRAINMEN, AND THE SWITCHMEN'S UNION OF NORTH  
AMERICA

Washington, D. C.

November 26, 1963

**Award**

This Award is made pursuant to Public Law 88-108,  
88th Congress, S. J. Res. 102, enacted August 28, 1963.

The organization parties to the dispute named H. E.  
Gilbert and R. H. McDonald as organization members of  
this Arbitration Board. The carrier parties to the dispute  
named Guy W. Knight and J. E. Wolfe as carrier members  
of the Board. Benjamin Aaron, James J. Healy, and  
Ralph T. Seward were named as neutral members by the  
President.

On September 11, 1963, the Board met, elected its  
Chairman and adopted rules of procedure. On September

23, 1963, in accordance with Section 3 of the Joint Resolution, the Secretary of Labor furnished to the Board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, together with memorandums setting forth his understanding of the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement.

Public hearings were held in Washington, D. C., on twenty-nine days between September 24 and November 2, 1963, at which witnesses were heard, exhibits introduced and arguments made. Rebuttal exhibits and written arguments were received on November 9, 1963.

On November 6 and 7, 1963, the neutral members of the Board with the agreement of the parties, visited certain railroad yards in the Chicago area. The sole purpose of these visits was to assist the neutral members in understanding the evidence and arguments presented at the formal hearings and nothing said or shown to them during these visits was accepted as evidence.

During the course of the proceedings, questions arose as to whether certain carriers and certain of their employees were or properly should be parties to the dispute and subject to the Board's jurisdiction. The carriers with regard to which such questions arose were the Union Railroad Company, the Florida East Coast Railway Company, and the Elgin, Joliet & Eastern Railway Company. The Board declined to rule on these jurisdictional questions on the grounds that final determination of the Board's jurisdiction over any particular carrier and any particular group of employees could be made only by the courts and that time did not permit the Board to conduct the special proceedings required for such a determination. Nothing in this Award, however, and no action by the Board, including the reception into evidence of Carriers' Exhibit No. 1 or Employees' Rebuttal Exhibit No. 33, listing certain carriers as parties to the proceeding, is intended to

prejudice the position of any carrier or any organization as to these jurisdictional questions.

The Board has incorporated in this Award any matters on which it found the parties were in agreement, has resolved the matters on which the parties were not in agreement, and has given due consideration to those matters on which the parties were in tentative agreement. Further, the Board has given due consideration to the effect of the Award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

After a full consideration of the evidence and arguments and upon the entire record, the Board makes a complete and final disposition of the issues submitted and finds and awards as follows.

#### I. DISPOSITION OF SECTION 6 NOTICES

Those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

#### II. USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER

##### Part A — Saving Clause

A (1). All agreements, rules regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.

### Part B — Reductions In Jobs

B (1). Within 7 days following the effective date of this Award, each carrier covered by this Award shall have the right to give to each local chairman of the organization representing firemen (helpers) in each fireman (helper) seniority district a list of pool and regularly assigned freight engine crews (including pool and regularly assigned crews used in mixed, miscellaneous, and unclassified services) and a list of regularly assigned yard engine crews (including regularly assigned crews used in transfer, belt line, and miscellaneous yard services) then employed by the carrier in each such seniority district. The two lists shall include those engine crews which, in the carrier's judgment, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, do not require the services of a fireman (helper).

B (2). Each local chairman, within 30 days of receipt of the carrier's lists, shall have the right, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, to designate the engine crews in which the carrier shall be required to continue to use firemen (helpers); provided, that such designated crews shall not be more than 10 per cent of the freight engine crew, nor more than 10 per cent of the yard engine crews, in any seniority district, as such crews are listed by the carrier. Each local chairman's designation of crews to be operated with firemen (helpers), made as provided herein, shall be final and binding upon the parties in interest and shall not be subject to challenge or review; but prior conference shall be had between the parties in interest with respect to the crews to be so designated by the local chairman. The time and place for the beginning of such conferences shall be agreed upon within 10 days after the receipt of the carrier's lists by the local chairman, and said time shall be within 20 days after the receipt of the said lists.

B (3). At 3-month intervals following the date of the carrier's original lists, the carrier shall give to each local chairman lists of pool and regularly assigned freight engine crews and of regularly assigned yard engine crews which have been established or discontinued in each seniority district during the preceding 3 months and which meet the criteria set forth in paragraph B (1) of this Award; and the number of crews designated by the local chairman in which the carrier shall be required to use firemen (helpers) shall thereafter be adjusted, in the manner provided in paragraph B (2) of this Award; provided that not more than 10 per cent of the pool and regularly assigned freight engine crews nor more than 10 per cent of the regularly assigned yard engine crews, then employed by the carrier in any seniority district and included in either list, shall be designated as crews in which firemen (helpers) must be used.

B (4). Copies of all lists herein required to be furnished by the carrier to the local chairman shall be furnished to the general chairman of the organization involved.

B (5). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant to the provisions of paragraphs B (2) and B (3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.

### Part C — Reductions In Employment

C (1). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to hire firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services) unless or until such new hire is needed to man engine crews designated by a local chairman as provided in paragraphs B (2) and B (3) of this Award; and firemen (helpers) that are unneeded to man such designated crews may be separated from the carrier's payrolls and have all of their seniority and employment rights and relations terminated to the extent permitted in the following paragraphs of Part C of this Award.

C (2). Firemen (helpers) hired on or after a date 2 years prior to the effective date of this Award may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated, and in such case shall be entitled to a lump sum separation allowance in an amount to be determined as provided in Section 9 of the Washington Job Protection Agreement of May 21, 1936.

C (3). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award whose average monthly earnings as firemen (helpers), hostler helpers, hostlers, or engineers have not exceeded \$200 during the 24 full calendar months preceding the effective date of this Award, may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated with a severance allowance equal to 100 per cent of their earnings during the preceding 24 calendar months; or may elect to remain on the seniority lists of the carrier with rights to such work as they are qualified to perform, and which may be or become available to them, as provided in Part D of this Award.



C (4). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award, who have not performed service as an engineer or as a fireman (helper) since that date, may be separated from the carrier's payrolls as firemen (helpers) and have all of their employment and seniority rights and relations as firemen (helpers) terminated with no severance allowance.

C (5). The provisions of paragraphs C (3) and C (4) of this Award shall not apply to officers or employees of the organizations representing firemen or engineers employed by the carrier, or to supervisory or management officials of the carrier, or to employees on appropriate leaves of absence, or to discharged employees whose cases for reinstatement are pending, providing, if not so situated, they could have met the minimum requirements of service or earnings.

C (6). All other firemen (helpers) with less than 10 years' seniority on the effective date of this Award shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until offered by the carrier another comparable job (such as, but not limited to, engineer, fireman (helper), brakeman, or clerk in the same or another seniority district) for which they are, or can become, qualified. The offer of another job shall carry with it relocation expenses as provided for and under the conditions set forth in Section 10 of the Washington Job Protection Agreement of May 21, 1936, the continuation of accumulated seniority rights toward such purposes as vacation and other applicable fringe benefits, and guaranteed annual earnings, for a period not exceeding 5 years, equal to the total compensation received by each such employee as fireman (helper), hostler helper, hostler, or engineer during the last 12

months in which compensation was received prior to the date of transfer. Such offers of jobs shall be posted and made available to all qualified firemen (helpers) in order of seniority in the seniority district in which the job offered is located. If, within 7 days after notice is posted, no senior man elects to take such offered job, the most junior man then on the fireman (helper) roster in that seniority district must, within 3 days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C (3) of this Award. If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, the next most junior fireman (helper) on that same roster must accept the job within 3 days from receipt of written notice or forfeit all of his employment and seniority rights and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided for above, or forfeit his employment and seniority rights and relations with, in each case, the allowance provided for above, until there are no firemen (helpers) with less than 10 years' seniority remaining on the seniority roster for the seniority district in which the job offer is located. Thereafter, the same procedure as is provided above shall be followed in the fireman (helper) seniority district which has its principal extra list for firemen (helpers) closest to the location of the job offered.

C (7). Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraph C (3) or C (4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of

this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition.

#### Part D — Rights To Work

D (1). Firemen (helpers) who elect to remain on the seniority lists of the carrier as provided in paragraph C (3) of this Award shall be entitled to exercise their seniority rights as firemen (helpers) to available employment in engine crews used in passenger service and in freight and yard engine crews designated by the local chairmen in their respective seniority districts as provided in paragraphs B (2) and B (3) of this Award, as hostlers or hostler helpers, and as engineers in any class of service for which they are qualified; but such firemen (helpers) shall have no rights to and shall not claim seniority rights to or employment in any other service.

D (2). Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C (6) and C (7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved.

D (3). Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the

day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D (2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B (2) and B (3), if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award.

D (4). Firemen (helpers) retained in service under the conditions set forth in Parts C and D of this Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B (2) and B (3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacancies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B (2) and B (3) of this Award.

#### Part E — Continuing Study

E (1). Within 30 days following the effective date of this Award, the parties shall establish a National Joint Board charged with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period that this Award remains in effect. During the 3-month period before the date this Award is due to expire, the National Joint Board shall prepare and issue to the parties a report based on its study.

E (2). The National Joint Board established in paragraph E (1) shall consist of 4 members, of whom 2 shall be selected by the carriers, and one each by the Brother-

hood of Locomotive Firemen and Enginemen, and by the Brotherhood of Locomotive Engineers. The expenses of the Board shall be borne by the participating parties.

### III. CONSIST OF ROAD AND YARD CREWS (OTHER THAN ENGINE SERVICE)

#### Part A — Basic Provisions

A (1). The issue of crew consist (other than engine service) shall be remanded to the local properties for negotiation. Pending the consummation of local agreements disposing of the issue, the following provisions shall govern the use of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen) employed in all classes of road service, including all miscellaneous and unclassified services, and the use of brakemen or helpers employed in all classes of yard, transfer, and belt line service, including all miscellaneous yard services.

A (2). No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, except by agreement, or pursuant to the provisions of this Award.

A (3). Either party in interest shall give written notice of any proposed change in any such stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified services, in the following categories:

- (a) branch lines, including the use of main lines where necessary to reach initial or final terminals of the branch line train; and
- (b) road service where existing rule, practice, or interpretation now requires the employment of more or less than 2 trainmen;

and of any proposed change in any such stipulated number of brakemen or helpers used in any class of yard, transfer, or belt line service, including all miscellaneous yard service. The parties in interest, as that term is used in this Award, shall include only the carrier and the organization representing the class or craft of employees holding seniority rights to the position or positions proposed to be abolished or created in the seniority district or districts in which such changes are proposed. The time and place for the beginning of conferences between the representatives of the parties in interest with respect to such proposed change or changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within 15 days after the receipt of said notice.

#### Part B—Review Procedures

B (1). If no agreement is reached between the parties as to the application of the guidelines enumerated in Part C of this Award, the dispute limited to the application of such guidelines as related to the issue involved may be referred by either party to a special board of adjustment.

B (2). Such special board of adjustment shall be chosen in the following manner:

- (a) Each party in interest shall name one member within 10 days after notice has been given that the dispute will be referred to such special board of adjustment; and the two partisan members so chosen, within 10 days after the date of the selection of the second partisan member, shall name the neutral member,

who shall be chairman of the board. If the members chosen by the parties shall fail to name the neutral member of the board within 10 days, the National Mediation Board shall be requested to name such member within 5 days after the receipt of such request.

- (b) If either party fails to name a member of the Board within the 10 days provided in paragraph B (2) (a) of this Award, the National Mediation Board shall be requested to name such member in lieu of such party and shall also name the neutral member necessary to constitute a board of 3 members, all within 5 days after the receipt of such request.

B (3). Decisions of the special board of adjustment shall be rendered within 60 days after the appointment of the neutral member. A decision of the majority of the board shall be binding upon both parties. The parties shall assume the costs and expenses of their respective representatives. The costs and expenses of the neutral member and any incidental expenses shall be shared equally by the parties unless different arrangements can be made by mutual agreement.

#### Part C—Guidelines

C (1). The special board of adjustment in making its decisions shall be governed by the following general considerations, and, where applicable, particular considerations, although none of these factors alone shall be controlling of the board's decisions.

C (2). General considerations.

- (a) Assurance of adequate safety.
- (b) Avoidance of unreasonable burden or workload on members of the crew.
- (c) Changes in operating conditions, including density of traffic.



- (d) Practices regarding the consist of crews in comparable situations where such practices are not in dispute.
- (e) Special conditions which exist on any particular assignment.
- (f) Duties required in compliance with the carrier's operating rules and instructions applicable to the crew in question.
- (g) Physical characteristics of the line to be traversed and in the areas where switching or industrial work is to be performed (including grade and general climatic conditions).
- (h) The number of highway, street, road, railroad, or other crossings or intersections to be protected.
- (i) State, county, or municipal regulations applicable with respect to highway, street, road, railroad, or other crossings or intersections.
- (j) Availability and use of communication equipment (such as, but not limited to, end-to-end train radio, train to way-side radio, and walkie-talkies).
- (k) The presence or absence of a fireman in the engine service crew.

C (3). Particular considerations—passenger road service.

- (a) The amount of baggage and storage mail to be handled on and off the train at intermediate stations by the train crew.
- (b) The number of passenger cars handled in the train and passenger count.
- (c) The method of handling passenger transportation (tickets).



- (d) The number of passengers boarding and leaving the train at intermediate stations.
- (e) Duties required other than the above on any particular assignment.

C (4). Particular considerations—freight service, including miscellaneous and unclassified services.

- (a) The amount and nature of work to be performed en route.
- (b) The length of train, in context with the amount and nature of work to be performed en route.
- (c) Time limitations applicable to the particular assignment.

C (5). Particular considerations—yard, transfer, and belt line service, including all miscellaneous yard services.

- (a) The amount and nature of the work to be performed.
- (b) Volume of work considered in context with applicable service time limitations.

#### Part D—Employee Protection

D (1). Road trainmen and yard brakemen or helpers, other than those on furlough on the date that this Award becomes effective, shall be known and designated, for the purposes of this Award, as “protected employees.”

D (2). A “protected employee,” known and designated as provided in paragraph D (1) of this Award, shall retain his rights to and obligations to protect road and yard service assignments (including all assignments in miscellaneous and unclassified road services and all assignments in transfer, belt line, and miscellaneous yard services) for which he is qualified, as provided by rules in effect on the day preceding the day this Award becomes effective, to the extent that such positions are available to him in his seniority dis-

trict, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of road trainmen and yard brakemen or helpers by natural attrition; provided, that no such "protected employee" shall have any right to jobs or positions that the carrier may discontinue pursuant to the provisions of this Award if other employment in any such classes of service, for which such employee is qualified, is available to him in his seniority district. If and when the carrier is required to create new jobs or positions for road trainmen or yard brakemen or helpers, pursuant to the provisions of this Award, such positions shall first be filled, to the extent available, by "protected employees" then filling positions which the carriers would otherwise have the right to abolish or eliminate pursuant to the provisions of this Award, before such jobs or positions may be claimed by other employees of the carrier in accordance with their seniority rights.

#### IV. DURATION

This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise.

Dated: November 25, 1963

BENJAMIN AARON  
*Neutral Member*

JAMES J. HEALY  
*Neutral Member*

RALPH T. SEWARD  
*Chairman of the  
Arbitration Board*

#### CONCURRING:

GUY W. KNIGHT  
*Carrier Member*

J. E. WOLFE  
*Carrier Member*

#### DISSENTING:

H. E. GILBERT  
*Organization Member*

R. H. McDONALD  
*Organization Member*

[June 9, 1964]

BEFORE THE  
ARBITRATION BOARD

Established by Joint Resolution of Congress

Approved August 28, 1963

Public Law 88-108

\* \* \* \* \*

S.U.N.A. QUESTION

Q. No. V—Under the provisions of III, Consist of Road and Yard Crews (other than engine service) Part A.

Question: Is it intended that there is a limitation on the number of times that notice may be served by the parties for the reduction of crew members on the same crew assignment?

Answer: It is not the intention of the Award that an issue determined by a Special Board of Adjustment under Section III—Part B should be reopened by either party during the life of the Board's Award, in the absence of material changes in conditions, including new evidence based upon the application of the determination of the Special Board, which would justify a different result.

\* \* \* \* \*

B.R.T. QUESTIONS

11.

Q. No. 11—Under Article III-B(3), a decision of a special board must be rendered within 60 days.

Question: Can this time limit be extended by the request of either party—by request of both parties?

12.

Question: Does a special board of adjustment established under the award lose its authority to exist upon the expiration of 60 days after the appointment of the neutral member?

Part B(3) of Article III states that decisions of the special board of adjustment shall be rendered within 60 days after the appointment of the neutral member.

Question: Does this mean that decisions rendered after the expiration of the 60 days provided have no force and effect?

Answers to Questions 11, 12 and 13: Section III, Part B(3) of the Award contemplates that a decision of a special board of adjustment established under the terms of the Award should be rendered within 60 days after the appointment of the neutral member. The time limit may be extended, however, by agreement of both parties. It may also be extended at the unilateral request of either party if a court of competent jurisdiction finds that the request is justified under all the circumstances. The Award contemplates that substantial adherence to its objectives should outweigh literal compliance with the time limits. Accordingly, whether a special board of adjustment loses its authority to exist after the expiration of 60 days, or whether a decision rendered by such board after the expiration of 60 days must be deemed to have no force or effect, are legal questions which can be decided only in the light of the facts of the given case.

• • • • •

Q. No. 15—Question: Does the designation of a neutral member of a Special Board under Part B(3) of Article III commence the sixty (60) day period the board is to exist, or is the date changed if another neutral is later designated to fill the original position due to a vacancy?

Answer: The sixty day time limit of Section III—Part B(3) of the Award begins on the day the neutral member is appointed. However, if the neutral position on the

Special Board becomes vacant and a new neutral is appointed to fill the vacancy, the sixty day time limit begins to run again with the date of this second appointment.

• • • • •

October 10, 1965

B.R.T. Question No. 33—Did the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East) violate the provisions of Award #282 by reducing the crew consist of a conductor and two brakemen to a conductor and one brakemen:

- (a) On certain main line freight trains,
- (b) On certain branch line freight trains, and
- (c) On certain main line passenger trains,

without complying with Article III of the Award rendered by Arbitration Board 282, made pursuant to Public Law 88-108, 88th Congress S.J. Res. 102, enacted August 28, 1963.

Answer: Section III, Part A(2) of the Award bars changes in the scope or application of "rules" in effect immediately prior to the effective date of this Award requiring a stipulated number of trainmen, whether such "rules" were established by agreement, interpretation or practice. Where no such "rule" was in effect immediately prior to the effective date of the Award, this bar does not apply. The Board does not construe the statement by Judge Miller, relied on by the Brotherhood, as a holding to the contrary. Judge Miller said, referring to an earlier opinion by Judge Holtzoff, that "it has been judicially determined that the language . . . [of] Subsection A(2) of Section III of the Award means that no change shall be made for the time being in the composition of any train crew except through the procedures set up in the Award." This construction is applicable only to situations in which there were rules in effect immediately prior to the effective date of the Award which required a stipulated number of

trainmen. As the Board indicated in its answer to B.R.T. Question 18, the question of whether such a rule was or was not in effect immediately prior to the effective date of the Award raises an issue of fact to be determined under existing procedures of the Railway Labor Act for the settlement of "minor" disputes. The Board notes the willingness of the Carrier to expedite the determination of this issue of fact in the present case.

\* \* \* \* \*

January 16, 1966

B.R.T. Question No. 46—On February 25, 1964 the St. Louis Southwestern Railway Company, purporting to act under the provisions of Article III of the Award of Arbitration Board 282 served a purported notice upon the Brotherhood of Railroad Trainmen of its desire to reduce the consist of crews as then established by existing agreements between it and the Brotherhood, a copy of which is attached hereto and marked Exhibit "A".

Over the objections of the Brotherhood of Railroad Trainmen, the parties negotiated and failed to resolve the dispute, whereupon the carrier referred the dispute to a special board of adjustment. Such special board of adjustment, over the objections of the Brotherhood of Railroad Trainmen, rendered a purported award on July 14, 1964 sustaining all of the carriers proposals.

On September 30, 1965 said carrier, again purporting to act under the provisions of Article III of the Award of Arbitration Board 282, served another purported notice upon the Brotherhood of Railroad Trainmen of its desire to reduce the consist of crews as then established by existing agreements between said carrier and the Brotherhood of Railroad Trainmen which related to yards and trains that were not included in the Carriers' Notice dated February 25, 1964. A copy of said notice is hereto attached and marked Exhibit "B". It relates to four yards in the

State of Arkansas involving thirty-three assignments. One of these yards is at almost the northern boundary of Arkansas and another is in the southwest corner of the state. The other two yards are located in about the central portion of the State of Arkansas, from north to south. The notice also relates to thirteen assignments on nine local freight trains. One of these freight trains operates over seventy-six miles in Missouri, during both daytime and darkness. One of such trains operates over forty miles in the State of Louisiana and the others operate over five hundred and eighteen miles in the State of Arkansas. Some of those trains operating in Louisiana and Arkansas operate during daylight hours and others during darkness and others during both.

In the circumstances: does the carriers' notice, dated September 30, 1965 conform to the requirements of the award of Arbitration Board 282?

Answer: Under the circumstances, the carrier's notice, dated September 30, 1965, does conform to the requirements of the Award of Arbitration Board 282.



### Stipulation as to Facts

The undersigned parties hereby stipulate and agree, by and through counsel, for the purpose of this case as follows:

A. A number of awards have been made by special boards of adjustment constituted pursuant to Article III of the Award by Arbitration Board No. 282. Such special board awards include those listed below relating to plaintiffs in this proceeding.

<i>Carrier</i>	<i>Organization</i>	<i>Date</i>
Atchison, T. & S. F. R. Co. and Panhandle & S. F. R. Co. <sup>1</sup>	BRT	Sept. 10, 1965
Atchison, T. & S. F. R. Co.	BRT	Jan. 13, 1966
Atlantic Coast Line R. Co.	BRT	Nov. 24, 1964
Bangor & Aroostock Railroad Co.	BRT	May 29, 1964
Belt R. Co. of Chicago	BRT	July 21, 1964
Belt R. Co. of Chicago	BRT	Jan. 5, 1966
Boston & Maine Corporation	BRT	Oct. 1, 1964
Buffalo Creek Railroad Co. <sup>2</sup>	SUNA	June 23, 1965
Camas Prairie Railroad Co.	SUNA	Sept. 8, 1965
Chesapeake & Ohio R. Co.	BRT	Sept. 2, 1965
Chesapeake & Ohio R. Co.	BRT	Oct. 20, 1965
Chicago & Eastern Illinois R. Co.	BRT	Jan. 17, 1966
Chicago, M. St. P. & P. R. Co. (Award No. 1)	BRT	July 10, 1964
Chicago, M. St. P. & P. R. Co. (Award No. 2)	BRT	July 10, 1964
Chicago, M., St. P. & P. R. Co.	BRT	Aug. 28, 1964
Chicago, M., St. P. & P. R. Co.	BRT	Dec. 9, 1964
Chicago, M., St. P. & P. R. Co. and The Kansas City Southern R. Co. (Milwaukee-Kansas City Southern Joint Agency)	BRT	Dec. 30, 1964

<sup>1</sup> The Panhandle & Santa Fe Railway Co. is now part of the Atchison, Topeka and Santa Fe Railway Co.

<sup>2</sup> The listing herein of the award by a special board of adjustment with respect to the Buffalo Creek Railroad Co. and the SUNA is without prejudice to the position of either party in *Switchmen's Union of North America, et al. v. Buffalo Creek Railroad Co., et al.*, Civil Action No. 11,422, now pending in the United States District Court for the Western District of New York.

<i>Carrier</i>	<i>Organization</i>	<i>Date</i>
Chicago & North Western R. Co.:		
CSTPM&O District—		
Award No. 1	BRT	Aug. 27, 1964
CSTPM&O District—		
Award No. 2	BRT	Aug. 27, 1964
L&M District—Award No. 1	BRT	Aug. 27, 1964
M&STL District—Award No. 1	BRT	Aug. 27, 1964
C&NW District—Award No. 1	BRT	Aug. 31, 1964
C&NW District—Award No. 2	BRT	Aug. 31, 1964
C&NW District—Award No. 3	BRT	Aug. 31, 1964
C&NW District—Award No. 4	BRT	Aug. 31, 1964
M. I. District—Award No. 1	BRT	Aug. 31, 1964
M&STL District—Award No. 1	SUNA	Aug. 27, 1964
Chicago, Rock Island & P. R. Co.	SUNA	Sept. 15, 1964
Chicago, Rock Island & P. R. Co.	SUNA	Nov. 20, 1965
Chicago & W.I.R. Co.	BRT	Dec. 12, 1964
Cincinnati Union Terminal Co.	BRT	Aug. 3, 1965
Clinchfield R. Co.	SUNA	Aug. 26, 1965
Colorado & Southern R. Co.	BRT	July 21, 1964
Davenport, R. I. & N. W. R. Co.	SUNA	Aug. 27, 1964
Ft. Worth & Denver R. Co.	BRT	May 20, 1964
Ft. Worth & Denver R. Co.	SUNA	May 27, 1964
Great Northern R. Co.	SUNA	Dec. 2, 1965
Green Bay & Western Railroad		
Co. and Kewanee, Green Bay		
& Western Railroad Co.	BRT	Jan. 25, 1966
Illinois Central R. Co.	BRT	Sept. 14, 1964
Illinois Central R. Co.	BRT	Nov. 30, 1964
Illinois Central R. Co.	BRT	Feb. 26, 1965
Illinois Central R. Co.	BRT	Oct. 26, 1965
Jacksonville Terminal Co.	BRT	Nov. 5, 1965
Kansas City Terminal R. Co.	SUNA	Dec. 21, 1964
Kansas City, Oklahoma &		
G. R. Co.	BRT	June 6, 1964
Kentucky & Indiana T. R. Co.	BRT	Aug. 17, 1964
Kentucky & Indiana T. R. Co.	BRT	Mar. 22, 1965
King Street Passenger Station	BRT	Jan. 4, 1965
Maine Central Railroad Co.	BRT	May 29, 1964
Midland Valley R. Co.	BRT	June 6, 1964
Minnesota, Dakota & Western		
R. Co.	BRT	Dec. 11, 1965

<i>Carrier</i>	<i>Organization</i>	<i>Date</i>
Missouri-Illinois R. Co.	BRT	Apr. 22, 1964
Missouri-Kansas-Texas R. Co.	BRT	May 14, 1964
Missouri Pacific R. Co. (Northern, Central and Southern Districts)	BRT	May 6, 1964
Missouri Pacific R. Co. (Gulf District)	BRT	May 6, 1964
Natchez & Southern R. Co. <sup>3</sup>	BRT	May 6, 1964
New Orleans & L. C. R. Co.	BRT	May 14, 1964
New Orleans U.P. Terminal	BRT	May 23, 1964
Norfolk & Western R. Co.	BRT	Jan. 5, 1966
Norfolk & Western R. Co.	BRT	Jan. 7, 1966
Norfolk & Western R. Co.	BRT	Jan. 21, 1966
Northern Pac. T. Co. of Oregon <sup>4</sup>	SUNA	July 15, 1965
Port Terminal R. Ass'n	BRT	May 14, 1964
Reading Company (Case No. 1)	BRT	Nov. 19, 1965
Reading Company (Case No. 2)	BRT	Nov. 19, 1965
Richmond, F. & P. R. Co.	BRT	Jan. 20, 1966
St. Louis Southwestern R. Co.	BRT	July 14, 1964
St. Louis & S. F. R. Co.	BRT	June 6, 1964
St. Paul Union Depot Co.	SUNA	Nov. 1, 1965
St. Paul Union Depot Co.	SUNA	Jan. 24, 1966
Southern Pacific Co.	BRT	June 4, 1964
Southern Pacific Co.	SUNA	Sept. 8, 1964
Southern Pacific Co.	SUNA	June 17, 1965
Southern Pacific Co.	SUNA	Nov. 22, 1965
Spokane, P. & S. R. Co.	BRT	Nov. 15, 1965
Terminal R. Ass'n of St. L.	BRT	Oct. 16, 1964
Texas & Pacific R. Co. <sup>5</sup>	BRT	May 6, 1964
Texas Pacific-Missouri Pacific Term. R. Co. of N. O.	SUNA	May 16, 1964

<sup>3</sup> The Natchez and Southern Railway Co. is now a part of the Missouri Pacific Railroad Co.

<sup>4</sup> The Northern Pacific Terminal Company of Oregon now is the Portland Terminal Railroad Company.

<sup>5</sup> The special board award also applies to subsidiaries of the Texas & Pacific Railway Company—Abilene & Southern Railway, Fort Worth Belt Railway Co., Texas-New Mexico Railway Co. and the Weatherford, Mineral Wells & North Western Railway Co.

<i>Carrier</i>	<i>Organization</i>	<i>Date</i>
Union Railway Co.	BRT	May 14, 1964
Union Term. & St. J. Belt R. Cos.	BRT	May 15, 1964
Wabash Railroad Co. <sup>6</sup>	BRT	Undated
Washington Terminal Co.	BRT	Oct. 15, 1964
Washington Terminal Co.	BRT	Nov. 26, 1965

<sup>6</sup> The Wabash Railroad Co. is now a part of the Norfolk and Western Railway Co.

B. A number of crew-consist agreements have been entered into which provide, either expressly or in language having similar import, that they shall continue in effect to the same extent as if they were awards rendered by special boards of adjustment pursuant to Section III of the Award by Arbitration Board No. 282. Such agreements include those listed below relating to plaintiffs in this proceeding:

[20 Agreements]

• • • • •

C. A number of crew-consist agreements have been entered into pursuant to Section III of the Award by Arbitration Board No. 282 which provide, either expressly or in language having similar import, that they shall continue in effect until changed in accordance with the provisions of the Railway Labor Act. Such agreements include those listed below relating to plaintiffs in this proceeding:

[43 Agreements]

• • • • •

D. A number of crew-consist agreements have been entered into pursuant to Section III of the Award by Arbitration Board No. 282 which contain a provision identical or similar to the following:

“This agreement . . . will continue in effect until January 25, 1966 and thereafter, PROVIDED, however, that if the Organization’s position—that upon expira-

tion of Award 282 the railroad parties thereto must revert to crew consist rules in effect prior to that Award—is sustained, then the Organization may within thirty (30) days give this Carrier sixty (60) days' notice to terminate this agreement and the Carrier will then revert to rules and practices in effect prior to January 25, 1964."

Such agreements include those listed below relating to plaintiffs in this proceeding:

[3 Agreements]

\* \* \* \* \*

E. A number of crew-consist agreements have been entered into pursuant to Section III of the Award by Arbitration Board No. 282 which do not contain any provision concerning the period during which the agreement shall continue in force. Such agreements include those listed below relating to plaintiffs in this proceeding:

[12 Agreements]

\* \* \* \* \*

F. A number of agreements have been entered into pursuant to Section III of the Award by Arbitration Board No. 282 which either do not come within any of the categories listed above or the parties hereto have been unable to agree upon placing such an agreement in one of the categories listed above. Such agreements include those listed below relating to plaintiffs in this proceeding:

(1) An agreement between the Alton and Southern Railroad and the BRT, dated March 5, 1965, paragraph 7 of which reads as follows:

"This Agreement shall become effective March 5, 1965, and shall remain in effect until January 25, 1966, as provided by Section IV, Duration of Arbitration Award No. 282. In this connection the parties hereto recognize that this Carrier and the Brotherhood of Railroad

Trainmen are parties to Arbitration Award No. 282 and will be subject to whatever disposition is made of the Crew Consist Issue nationally at the expiration of, or prior to, the effective period of Award No. 282."

• • • • •

(3) An agreement between the Denver and Rio Grande Western R. Co. and the Brotherhood of Railroad Trainmen, dated December 4, 1964, paragraph 4 of which reads as follows:

"This agreement, which is in full and final settlement of Carrier's notice of February 25, 1964, File NLRC-6, shall become effective January 1, 1965, and Section 3 hereof shall remain in effect until January 25, 1966; with the understanding that neither party shall serve notice under the provisions of Arbitration Award No. 282 for any change in crew consists prior to January 25, 1966."

(4) An agreement between the East St. Louis Junction R. Co. and the BRT, dated May 4, 1965, paragraph 7 of which reads as follows:

"This Agreement shall become effective May 4, 1965, and shall remain in effect until January 25, 1966, as provided in Section IV, Duration of Arbitration Award No. 282. In this connection the parties hereto recognize that this Carrier and the Brotherhood of Railroad Trainmen are parties to Arbitration Award No. 282 and will be subject to whatever disposition is made of the Crew Consist issue nationally at the expiration of, or prior to, the effective period of Award No. 282."

(5) An agreement between the Illinois Terminal Railroad Company and the BRT, dated November 23, 1964, which reads in part as follows:

"This agreement shall become effective on December 1, 1964 and shall continue in effect only for the duration of the Award of Arbitration Board No. 282."

(6) An agreement by the Kansas City Southern Railway Company and the Louisiana & Arkansas Railway Company

with the BRT, dated September 4, 1964, paragraphs 16 and 17 of which read as follows:

"16. This agreement does not affect schedule rules, agreements, (and practices with respect to consist of crews), in effect on the day preceding the effective date of this agreement, except to the extent modified by this Agreement and by interpretations of Arbitration Board No. 282 for the period this agreement remains in effect, as provided in Section 17 hereof.

"17. This Agreement is in settlement of the dispute arising as a result of the Carriers' notices of April 24, 1964, June 15, 1964 and June 22, 1964, and the Organization's notices of July 22, 1964, served pursuant to Article III, Part A(3), of the Award of Arbitration Board No. 282, dated November 26, 1963 and the parties hereto agree not to serve any other notices, in pursuance of the Award, prior to January 25, 1966. This agreement shall be effective October 1, 1964 and shall remain in effect until January 25, 1966, unless the parties agree otherwise, in accordance with Article IV, Duration of Award of Arbitration Board No. 282."

• • • • •  
 (8) An agreement between the Texas Mexican Railway Company and the BRT, effective August 1, 1964, which provides in part as follows:

"This agreement disposes of the notice served by this carrier on February 27, 1964, and will continue in effect in accordance with Section IV 'Duration' of Award of Arbitration Board 282."

(9) An agreement between the Toledo, Peoria and Western R. Co. and the BRT, effective March 19, 1965, paragraph VII of which reads in part as follows:

"This agreement is in full and final settlement of Carrier's notice dated January 25, 1964 and Employees' notice dated January 28, 1964, both in accord with Arbitration Award No. 282, Section III, and will continue in effect until January 25, 1966 in accordance



with Article IV 'Duration' of Award of Arbitration No. 282 unless otherwise agreed between the parties."

\* \* \* \* \*

(11) An agreement between the Union Pacific Railroad Company (Territory Los Angeles—Salt Lake City) and the BRT, dated September 1, 1964, paragraph IV of which reads as follows:

"This agreement shall become effective at 12:01 AM, September 5, 1964 and shall continue in effect only for the duration of the Award of Arbitration Board No. 282."

(12) An agreement between the Union Pacific Railroad Company (Territory Los Angeles—Salt Lake City) and the BRT, dated December 4, 1964, paragraph 4 of which reads as follows:

"This agreement will continue in effect only for the duration of the Award of Arbitration Board No. 282."

(13) An agreement between the Wichita Terminal Association and the BRT, dated October 9, 1965, which reads in part as follows:

"In accordance with the provisions of Section III of Award of Board of Arbitration No. 282, it is mutually agreed by the parties hereto that Article VIII—Consist of Crew, of the current Agreement between the parties hereto is hereby modified during the term of this Agreement as provided herein:

\* \* \*

"8. This agreement does not abrogate or modify the General Working Agreement between the parties hereto except as specifically provided herein.

\* \* \*

"10. This Agreement shall become effective October 16, 1965, and shall remain in effect until January 25, 1966, as provided by Section IV, Duration of Arbitration Award No. 282. In this connection the parties hereto recognize that this Carrier and the Brother-

hood of Railroad Trainmen are parties to Award of Board of Arbitration No. 282 and will be subject to whatever disposition is made of the Crew Consist issue nationally at the expiration of, or prior to, the effective period of Award No. 282."

G. As is more fully set forth in the correspondence attached hereto as Exhibits B through H, the BRT agreed that the Richmond, Fredericksburg & Potomac Railroad Company could make certain changes in crew consist, pursuant to Section III of the Award by Arbitration Board No. 282, until January 25, 1966, and took the position that the agreement expired on January 25, 1966. The Richmond, Fredericksburg & Potomac Railroad Company took the position that the duration of the agreement would be the same as any agreement made by the parties in collective bargaining which does not include a specific termination date.

H. Some of the special board awards and crew consist agreements identified in Sections A through G above apply to particular divisions or other limited portions of the carrier involved. Some of the special board awards and crew consist agreements identified in Sections A through G above have been supplemented, interpreted or modified by the special board of adjustment or by agreement of the parties.

I. In some instances, a carrier served prior to January 26, 1966 a notice of proposed changes in crew consist pursuant to Section III of the Award by Arbitration Board No. 282, but proceedings upon such notice had not been completed by an agreement or special board award as of January 26, 1966. Such instances involving a plaintiff to this proceeding include the following:

- (1) On September 13, 1965, the Chicago and North Western Railway Company (M&STL District) served the SUNA with a written notice, pursuant to Section III of the Award, of proposed changes in crew consist. Conferences were held by the parties, on September 28 and 29, 1965, but no

agreement was reached. The carrier, on October 18, 1965, requested that a special board of adjustment be established. The parties were unable to agree upon a neutral member of the special board, and the carrier, on January 14, 1966, requested the National Mediation Board to appoint a neutral member. The parties were notified by the National Mediation Board, on January 18, 1966, that Mr. Leonard E. Lundquist had been appointed as the neutral member. The members of the special board of adjustment agreed to hold their initial meeting on February 1, 1966. The SUNA at that meeting filed a written motion that the proceedings be dismissed on the ground that the Award by Arbitration Board No. 282 had expired on January 25, 1966. The SUNA requested, in the alternative, that the proceedings be stayed pending a judicial determination as to the authority of the special board of adjustment. The carrier opposed the motion by the SUNA. On February 2, 1966, the special board denied the request by the SUNA for a stay pending a judicial determination and reserved judgment upon the request to dismiss the proceedings. The special board of adjustment issued an award, dated March 11, 1966, and in that award denied the motion by the SUNA to dismiss the proceedings.

(2) On December 9, 1966, the Great Northern Railway Company served the SUNA with a written notice, pursuant to Section III of the Award, of proposed changes in crew consist. After a conference between the parties on December 22, 1965 did not result in an agreement, the carrier, on December 23, 1965, requested that a special board of adjustment be established. The parties were unable to agree upon a neutral member for the special board and the carrier, on January 12, 1966, requested the National Mediation Board to appoint a neutral member. Mr. John H. Dorsey was appointed by the National Mediation Board, on January 14, 1966, as the neutral member, and he scheduled an executive session of the special board for January 19, 1966 to be followed by a hearing of the evidence. The SUNA

requested that the hearing be postponed until January 24, 1966, on the ground that its National General Chairmans Conference was scheduled for January 20 and 21, 1966, and the SUNA member of the special board deemed his attendance at that conference to be necessary. An executive session of the special board was held on January 19, 1966, in which the SUNA motion for a postponement was considered. A transcript of the proceedings of that meeting is attached hereto as Exhibit I. The hearings were postponed until January 24, 1966 and have continued from time to time thereafter. A stipulation by the parties was read into the record of the hearing on February 4, 1966 (Vol. XIV), and a copy of the page of that record containing the stipulation is attached hereto as Exhibit J. The proceedings of the special board are in recess at this time.

(3) On October 1, 1965, the Lake Superior Terminal and Transfer Railway Company served the SUNA with a written notice, pursuant to Section III of the Award, of proposed changes in crew consist. After conferences by the parties in which no agreement was reached, the carrier, on October 28, 1965, referred the dispute to a special board of adjustment. The parties were unable to agree upon a neutral member and the carrier, on December 3, 1965, requested the National Mediation Board to appoint a neutral member of the special board of adjustment. The parties were notified by the National Mediation Board, in a letter dated December 9, 1965, that Mr. Robert J. Ables had been appointed as the neutral member.

After hearings commencing on January 4, 1966, the members of the special board of adjustment held an executive session on January 19, 1966 at which time the neutral member submitted his proposed award. Neither the carrier nor the organization member of the special board would accept the neutral's proposed award, and no award was issued. The carrier, on February 23, 1966, requested the National Mediation Board to appoint another neutral member to re-

place Mr. Ables. The National Mediation Board has not yet acted upon his request.

(4) On September 30, 1965, the St. Louis Southwestern Railway Company served the BRT with a written notice, pursuant to Section III of the Award, of proposed changes in crew consist. The BRT, on October 4, 1965, objected that the notice did not comply with the Award. On October 8, 1965, the BRT filed a motion for supplementary relief against the St. Louis Southwestern Railway Company in Misc. 41-63, United States District Court for the District of Columbia. In that motion, the BRT sought to enjoin the carrier from proceeding under Article III of the Award with respect to the notice of September 30, 1965, and alleged that certain questions relating to the validity of the notice were pending before Arbitration Board No. 282. Since the answers by the Board to those questions possibly could establish either that the motion for supplementary relief was without basis or that the carrier's notice of September 30, 1965 was improper, the parties stipulated and agreed that the carrier would give the BRT three-days advance notice of its intent to refer the matter covered by its notice to a special board of adjustment and would file its response to the motion for supplementary relief at least three days prior to such reference to a special board of adjustment. Pursuant to such stipulation and upon motions by the carrier, the time in which the carrier could file its response to the motion for supplementary relief was extended from time to time by order of the Court.

While the hearing on the motion for supplementary relief was thus being delayed, the parties held a number of conferences in which negotiations took place upon the proposals made by the carrier in its notice of September 30, 1965. No agreement was reached, however, and in the last such conference, held on December 21, 1965, the carrier informally notified the BRT that it intended to refer the dispute to a special board of adjustment. The carrier's intent

in that regard was confirmed in a telegram dated December 25, 1965, and the carrier's response to the motion for supplementary relief was filed on December 22, 1965. That motion was withdrawn by the BRT on January 4, 1966.

The parties were unable to agree upon a neutral member for the special board of adjustment, and the carrier, on January 17, 1966, requested the National Mediation Board to appoint a neutral member. Mr. Charles W. Anrod was named as the neutral member by the National Mediation Board, on January 19, 1966. On January 24, 1966, Mr. Anrod advised the parties that the hearings of the special board would start on February 15, 1966. In a letter to Mr. Anrod dated January 31, 1966, the BRT contended that such hearings were not authorized by the Award as the Award expired on January 25, 1966. Mr. Anrod requested instructions from the National Mediation Board, on February 3, 1966, and was advised by the Board, on February 7, 1966, that it had no authority to issue such instructions. On February 12, 1966, Mr. Anrod advised the parties that the hearings would commence on February 15, 1966 as previously scheduled.

On February 12, 1966, the BRT filed a complaint for a declaratory judgment and injunctive relief against the carrier, its representative on the special board and Mr. Anrod in the United States District Court for the Eastern District of Texas, Tyler Division (Civil Action No. 4575). In that complaint, the BRT asked for a judgment "declaring that since January 24, 1966, no special board of adjustment which was provided by the Award of Arbitration Board No. 282 has authority to commence or conduct the arbitration of a dispute with respect to the consist of crews in road and yard services or to make an award with respect thereto and to enjoin Defendants from proceeding as a special board of adjustment such as was provided by the Award of Arbitration Board to 282 to arbitrate the dispute as to the consists of road and yard crews mentioned in the aforesaid

Notice of Defendant St. Louis Southwestern Railway Company." On February 14, 1966, Mr. Anrod notified the parties that the hearing by the special board of adjustment set for February 15, 1966 had been "continued sine day until further notice" in view of the complaint filed by the BRT. The carrier and the BRT, on February 14, 1966 and March 11, 1966, entered into the stipulations attached hereto as Exhibits K and L whereby the proceedings of the special board of adjustment and in the action brought by the BRT were stayed pending the final judgment of this Court in the instant case.

J. The plaintiffs listed below did not, prior to January 26, 1966, enter into a crew-consist agreement or obtain an award by a special board of adjustment pursuant to Section III of the Award by Arbitration Board No. 282:

Akron & Barberton Belt Railroad Company  
Akron, Canton & Youngstown Railroad Company  
Bauxite and Northern Railway Company  
Brooklyn Eastern District Terminal Railroad  
Bush Terminal Railroad Company  
Chicago & Illinois Midland Railway Company  
Chicago Union Station Company  
Detroit & Mackinac Railway Company  
Detroit & Toledo Shore Line Railroad Company  
Detroit Terminal Railroad Company  
Duluth, Winnipeg & Pacific Railway  
Elgin, Joliet and Eastern Railway Company  
Illinois Northern Railway  
Indianapolis Union Railway Company  
Lake Superior & Ishpeming Railroad Company  
Lake Superior Terminal & Transfer Railway Company  
Lehigh & New England Railway Company  
Los Angeles Junction Railway  
Manufacturers Railway Company  
Monongahela Railway Company  
New Orleans Terminal Company



New York Dock Railway  
 New York & Long Branch Railroad Company  
 Norfolk Southern Railway Company  
 Oregon, California & Eastern Railway Company  
 Oregon Electric Railway  
 Oregon Trunk Railway Company  
 Peoria Terminal Company  
 Pittsburg & Shawmut Railroad Company  
 Portland Terminal Company  
 San Diego & Arizona Eastern Railway Company  
 Sioux City Terminal Railway Company  
 Spokane International Railroad Company  
 Toledo Terminal Railroad Company  
 Western Railway of Alabama  
 Winston-Salem Southbound Railway Company

K. The plaintiffs listed below were not represented in the proceedings before Arbitration Board No. 282 which preceded its Award, by a Carriers' Conference Committee or otherwise:

• • • • •

L. All of the plaintiffs except those listed below served the BRT, SUNA and/or ORCB, on or about November 2, 1959, with the Section 6 notices referred to in paragraph 8 of the Complaint:

• • • • •

M. All of the plaintiffs except those listed below were served by the BRT, SUNA and/or ORCB, on or about September 7, 1960, with the Section 6 notices referred to in paragraph 10 of the Complaint:

• • • • •

N. This section of the stipulation relates only to the following plaintiffs (collectively referred to in the remainder of this section as the "carriers"):

Southern Railway Company  
 Cincinnati, New Orleans & Texas Pacific R. Co.

Harriman & Northeastern Railroad  
Alabama Great Southern Railroad Co.  
New Orleans & Northeastern Railroad Co.  
New Orleans Terminal Co.  
Georgia Southern & Florida R. Co.  
St. Johns River Terminal Co.

The carriers, on November 2, 1959, served the Section 6 notices referred to in paragraph 8 of the Complaint upon the BRT. The BRT, on September 7, 1960, served the carriers with the Section 6 notices referred to in paragraph 10 of the Complaint. On July 22, 1960, the carriers withdrew their Section 6 notices of November 2, 1959 and the carriers, on September 16, 1960, served new Section 6 notices on the BRT proposing changes in crew-consist rules. In October of 1960, the carriers withdrew their Section 6 notices of September 16, 1960 and the BRT withdrew its Section 6 notice of September 7, 1960. The carriers were not parties to or represented in the proceedings before Emergency Board No. 154 referred to in paragraph 12 of the Complaint, and were not parties to or represented in the proceedings before Arbitration Board No. 282. The carriers' notices of November 2, 1959 and of September 16, 1960 and the BRT's notices of September 7, 1960 having been withdrawn, neither party threatened to resort to self help against the other with respect to those notices.

On June 30, and July 4, 1964, the carriers served the BRT pursuant to Section 6 of the Railway Labor Act proposing, among other things, changes in crew-consist rules. After negotiations on the properties and mediation by the National Mediation Board, the parties entered into an agreement, dated July 26, 1965, a copy of which is attached hereto as Exhibit M.

O. The Tennessee, Alabama & Georgia Railway Co. did not serve the BRT with the Section 6 notice of November 2, 1959 referred to in paragraph 8 of the Complaint. The BRT did serve that carrier with the Section 6 notice of

September 7, 1960 referred to in paragraph 10 of the Complaint. The carrier acknowledged the said notice of September 7, 1960 and the parties agreed, in an exchange of correspondence, that further negotiations concerning the proposals made therein would be held in abeyance pending the outcome of national handling of similar proposals between the Class I carriers and their employees. The Tennessee, Alabama & Georgia Railway Co. was not a party to or represented in the proceedings before Arbitration Board No. 282. On December 28, 1964, the carrier and the BRT entered into an agreement, a copy of which is attached hereto as Exhibit N.

P. The Terminal Railway, Alabama State Docks did not serve the BRT with the Section 6 notice of November 2, 1959 referred to in paragraph 8 of the Complaint. The BRT did serve that carrier with the Section 6 notice of September 7, 1960 referred to in paragraph 10 of the Complaint. In a conference held on September 19, 1960, the parties agreed to recess further negotiations until after national handling of the notices of November 2, 1959 and September 7, 1960 had been completed. The carrier was not a party to or represented in the proceedings before Emergency Board No. 154 referred to in paragraph 12 of the Complaint, and was not a party to or represented in the proceeding before Arbitration Board No. 282. On November 20, 1964, the carrier and the BRT entered into an agreement, a copy of which is attached hereto as Exhibit O.

Q. The plaintiffs listed below were served by the BRT, between January 25, 1964, and January 25, 1966, with notices of proposed changes in crew consist rules, which notices were claimed by the BRT to have been served pursuant to Section 6 of the Railway Labor Act:

[85 Plaintiffs]

• • • • •

R. Except for the East St. Louis Junction Railroad and the Tennessee, Alabama & Georgia Railway Co., all of the plaintiffs listed in Section Q above as having been served notices by the BRT subsequently served the BRT with notice of a proposed change in crew consist in letters substantially in the form of the letter attached hereto as Exhibit P. In addition, the following plaintiffs who were not served with notices by the BRT also served the BRT with notices of a proposed change in crew-consist rules in letters substantially in the form of the letter attached hereto as Exhibit Q.

[23 Plaintiffs]

• • • • •  
S. The parties hereto reserve the right to object to the relevancy of any of the facts stipulated above and to take any position deemed to be appropriate with respect to the legal significance of the facts stipulated above.

Dated: March 22, 1966

FRANCIS M. SHEA

*Attorney for plaintiffs.*

MILTON KRAMER

*Attorney for defendants*

*Brotherhood of Railroad Trainmen,  
Switchmen's Union of North America,  
and Bill Doak Lodge Division 584,  
Brotherhood of Railroad Trainmen.*

## EXHIBIT B

October 9, 1964

Mr. Lester Kimball, General Chairman  
Brotherhood of Railroad Trainmen  
203 Prospect Terrace  
Alexandria, Virginia

Dear Sir:

Pursuant to Article III, Part A(3), of the Award of Arbitration Board No. 282, we hereby serve notice of the following proposed changes in the number of brakemen (helpers) to be used in any and all classes of yard transfer or belt line service and all miscellaneous yard service:

Yard crews, except hump crews for the Northward and Southward humps at Potomac Yard and the Terminal (Broad Street Station) Job at Richmond shall consist of one (1) conductor (foreman) and one (1) brakeman (helper).

Note: No change is proposed in the crew consist of the hump crews at Potomac Yard or the Broad Street Station Terminal Job at Richmond at this time.

In accordance with Article III, Part A(3), of the Award of Arbitration Board No. 282, it is necessary that we agree within ten (10) days on the time and place for a conference to be held with respect to such proposed changes, such conference to be within fifteen (15) days after receipt of this notice. It is therefore suggested that we meet in the conference room in my office (Room 200), Broad Street Station, Richmond, Virginia, at 2:30 p.m., E.S.T., on Thursday, October 22, 1964. If this is not convenient for you, please advise me of your suggestion for an alternate date within

the time limits specified in Article III, Part A(3) of the award.

Yours very truly,

C. E. MERVINE, JR.  
*Assistant to President and  
Director of Personnel*

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EXHIBIT C

October 27, 1964

Mr. C. E. Mervine, Jr., Director of Personnel  
Richmond, Fredericksburg & Potomac Railroad  
Broad Street Station  
Richmond, Virginia

Dear Sir:

On October 9, 1964, you served me notice pursuant to Article III, Part A(3) of the Award of Arbitration Board No. 282 to work all yard crews, except Northward and Southward hump crews at Potomac Yard and the Terminal (Broad Street Station) Job at Richmond, Virginia with one (1) Conductor (Foreman) and one (1) Brakeman (Helper), and of course, this would be subject to that portion of D(2) captioned PART D—EMPLOYEE PROTECTION and reading in part as follows:

“A “protected employee” known and designated as provided in paragraph D(1) of this Award shall retain his rights to and obligations to protect . . . yard service assignments . . . and all assignments in transfer, belt line, and miscellaneous yard service for which he is qualified, as provided by rules in effect on the day preceeding the day this Award becomes effective . . . ”

The above would only be in effect for the duration of Award 282 which expires January 25, 1966, therefore, when

Mr. T. B. Choate spoke in your behalf when he called me on October 21st, *I advised him that the above was agreeable to us and that we accepted same.*

While meeting with you and your staff on October 26, 1964, I also advised you I accepted the above.

On October 26th *you attempted* to have me enter into permanent rule changes in accordance with the Railway Labor Act. I asked to postpone meetings until November 15, 1964 until I could get a Grand Lodge Officer, you refused. You allowed me until October 30th and I have called and been unable to contact our B. of R. T. President, therefore, I will not be able to meet with you on that date.

Even though your notice was only served October 9, 1964 you expressed great need to immediately place Award 282 in effect on this property, therefore, you set the effective date as of November 15, 1964 and this I also accepted.

As far as I am concerned, by the signing of this letter we have consummated an agreement in accordance with your letter of October 9, 1964 for the duration of Award 282.

Your proposal consummated in this agreement will leave some of the key assignments working with only one (1) brakeman and one (1) conductor if you furlough any of the 12 employees hired after January 24, 1964, and of course, you have that privilege under Award 282.

If you feel that this agreement does not grant you all you're entitled too under Award 282, please make same down in writing.

Yours truly,

LESTER KIMBALL

Lester Kimball, *General Chairman*

*Brotherhood of Railroad Trainmen*

cc: Mr. C. Luna, Pres., BRT  
Local Chairmen



## EXHIBIT D

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY  
BROAD STREET STATION  
RICHMOND, VA. 23220

October 28, 1964

Mr. Lester Kimball, General Chairman  
Brotherhood of Railroad Trainmen  
203 Prospect Terrace  
Alexandria, Virginia

Dear Sir:

This will acknowledge receipt of your letter of October 27, 1964, and is to confirm the conference of October 26, on our crew consist Notice of October 9, 1964, served pursuant to Article III, Part A(3), of the Award of Arbitration Board No. 282.

In conference, pursuant to provisions of the Award I attempted to discuss the guidelines with you and explain their applicability to the specific yard assignments on which we propose to use one brakeman (helper) instead of two. You did not seem interested in hearing me out in this respect, and repeatedly stated you were willing to sign an agreement to reduce the crew consist on all yard assignments, except the hump crews at Potomac Yard, and the Terminal (Broad Street Station) Job at Richmond, provided such agreement would only be in effect for the duration of Award of Arbitration Board No. 282.

There is no language in the Award to the effect that an agreement reached pursuant thereto, or an award of a special board of adjustment established pursuant thereto, will terminate on January 24, 1966, or any specified subsequent date. While we are desirous of negotiating an agreement giving consideration to the guidelines pursuant to the Award of Arbitration Board No. 282, in the interest of saving both sides the time and expense involved in a special

board of adjustment, we are not agreeable that the duration of such an agreement or an award of a special board of adjustment be limited to run only until January 24, 1966, and automatically expire at that time.

You stated in your letter of October 27 that I "*attempted* to have you enter into permanent rule changes in accordance with the Railway Labor Act" and that I "set the effective date as of November 15, 1964." You are misleading on both points. At the conclusion of our discussion on October 26, you asked that I prepare an agreement draft for your consideration, which was done to comply with your request, and the date of November 15, 1964, was only suggested by me with you indicating it was acceptable.

As pointed out to you in conference, we feel that any agreement reached must clearly indicate that it is made pursuant to the general considerations set forth in the Award of Arbitration Board No. 282, and shall have the same force and effect as an award of a special board of adjustment established under Article III, Part B, of the Award.

If you are sincerely willing to agree to the crew consist reductions we have proposed and want to avoid the specific language used in paragraph 3 of the agreement draft, it appears that we should be able to take care of this and get together on the alternate suggestion which I mentioned to you, viz., that we merely provide the agreement shall continue in effect and to the same extent as if it were an award issued pursuant to Article III of the Award of Arbitration Board No. 282.

You agreed to meet with me at 2:30 p.m. on Friday, October 30, 1964, "with or without Grand Lodge assistance," in a further attempt to resolve this matter. You now say you will be unable to do so because you have been unable to contact your "B. of R. T. President." It certainly appears you should have had sufficient time to arrange for

any assistance you might feel necessary and I expect you to meet with me at 2:30 p.m. on October 30, 1964, as you agreed, to at least discuss further the alternate suggestion mentioned above. If you do not meet with me at that time or get in touch with me promptly upon receipt of this letter to arrange another meeting without undue delay, in view of our experience with you for some time now you leave me with no other reasonable alternative under the circumstances but to regard your actions as indicating you do not intend to reach such agreement as contemplated by the Award of Arbitration Board No. 282, except on your specified terms which are inconsistent, and we will thus be compelled to proceed to arrange for a special board of adjustment under Article III, Part B, of the Award of Arbitration Board No. 282.

Yours very truly,

C. E. MERVINE JR.

*Assistant to President*

*and*

*Director of Personnel.*

bcc: Mr. W. S. Macgill, Chairman  
Southeastern Carriers' Conference Committee  
Room 474, Union Station  
517 West Adams Street  
Chicago, Illinois 60606

## EXHIBIT E

October 31, 1964

Mr. C. E. Mervine, Jr., Director of Personnel  
Richmond, Fredericksburg & Potomac Railroad  
Broad Street Station  
Richmond, Virginia

Dear Sir:

This is to confirm receipt of your letter of October 28th regarding mine of October 27th consummating your notice of October 9, 1964 into a temporary agreement in accordance with Award 282.

Your notice was served in accordance with Award 282 to change "the number of brakemen (helpers) to be used in all classes of yard transfer or belt line service and all miscellaneous yard service."

Your second paragraph is herewith reproduced:

"Yard crews, except hump crews for the Northward and Southward Humps at Potomac Yard and the Terminal (Broad Street Station) Job at Richmond shall consist of one (1) conductor (foreman) and one (1) Brakeman (helper)."

*We did not challenge any of the above assignments and we still do not challenge any of the assignments, therefore, we accept your formal notice as an agreement in accordance with the terms of the Award of Arbitration Board 282.*

The attrition and protective provisions of Part D, Article III of the Award of Arbitration Board No. 282 is not in dispute.

The guidelines are to be used when there is a dispute as to what assignments are to be increased or decreased and a Special Board appointed. *Since we do not challenge any*

*of the assignments there is no dispute as to what assignments should be increased or decreased, therefore there is no necessity for a Special Board.*

Part A(2) of Article III of the Award reads in part as follows:

*"No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, . . . except by agreement, or pursuant to the provisions of this Award."*

We accept an agreement as being forced upon us by Award 282 and not by an agreement to change contractual agreements negotiated in accordance with the Railway Labor Act.

We now have an agreement in accordance with your notice served upon us on October 9, 1964 and I expect it to be put in effect November 15, 1964.

If you deem it necessary to have further conferences on this, I will meet with you as soon as I can get Grand Lodge assistance which should not involve undue delay.

Yours truly,

LESTER KIMBALL

Lester Kimball, *General Chairman*  
*Brotherhood of Railroad*  
*Trainmen*

cc: Mr. C. Luna, Pres., BRT  
*Local Chairman*

EXHIBIT F

November 5, 1964

Mr. Lester Kimball, General Chairman  
Brotherhood of Railroad Trainmen  
283 Prospect Terrace  
Alexandria, Virginia

Dear Sir:

I am in receipt of your letter of October 31, acknowledging that an agreement has been reached in accordance with the notice served on the Brotherhood of Railroad Trainmen by the R. F. & P. on October 9, 1964. It is understood that this agreement takes the place of a Special Board Award entered under the provisions of the Award of Arbitration Board 282, and as such obviates the necessity of special board procedure. The duration of the agreement will be the same as any other agreement made by the parties in collective bargaining which does not include a specific termination date.

Accordingly we shall place this agreement in effect 12:01 a.m., Sunday, November 15, 1964.

Please acknowledge receipt.

Yours very truly,

*Assistant to President  
and  
Director of Personnel.*

## EXHIBIT G

November 9, 1964

Mr. C. E. Mervine, Jr., Director of Personnel  
Richmond, Fredericksburg & Potomac Railroad  
Broad Street Station  
Richmond, Virginia

Dear sir:

This is to acknowledge your letter of November 5 regarding your notice of October 9, 1964 expressing your desire to be able to work with certain crews with one conductor (foreman) and one brakeman (helper) in accordance with Award No. 282 and our letters of acceptance of October 27 and 31, 1964.

Of course you can only work a crew with one conductor (foreman) and one brakeman (helper) when there are *no* protected employees (Part D-D(1)).

In using protected employees in accordance with Part D as per rules in effect on the day preceding the day Award No. 282 became effective, the method used in filling the minimum crew consist of one Conductor (foreman) and two brakemen (helpers) is as follows:

- 1- By the excise of seniority rights.
- 2- By the use of Extra Boards.
- 3- The run up rule, doubling through rule and then the assigned day off rule for Potomac Yard, Alexandria, Va.
- 4- The Assigned day off rule, the run up rule and the doubling through rule for Richmond yardmen, Richmond, Va.

The effective date of this agreement forced upon us is November 15, 1964 and as far as I am concerned, it expires January 25, 1966 unless we agree otherwise in accordance



with Article IV, Duration of Award Arbitration Board No. 282 and at present I do not agree otherwise.

Yours truly,

LESTER KIMBALL

Lester Kimball, *General Chairman*  
*Brotherhood of Railroad*  
*Trainmen*

cc: Mr. C. Luna, President, BRT  
*Local Chairman*

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EXHIBIT H

November 12, 1964

Mr. Lester Kimball, General Chairman  
Brotherhood of Railroad Trainmen  
283 Prospect Terrace  
Alexandria, Virginia

Dear Sir:

I have received your letter of November 9, 1964, concerning an agreement on crew consist in accordance with our notice served on the Brotherhood of Railroad Trainmen on October 9, 1964.

On November 15, 1964, that agreement will be placed in effect with the understanding that there is a difference between the parties on the duration of that agreement. The opinion of the RF&P on the issue of agreement duration is outlined in my letter to you of November 5, 1964, while your opinion is expressed in your letter to me of November 9, 1964.

As far as the RF&P is concerned this concludes our handling of the subject agreement at this time.

Yours very truly,

*Assistant to President*  
*and*  
*Director of Personnel*

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## EXHIBIT I

BEFORE THE  
SPECIAL BOARD OF ADJUSTMENT  
ESTABLISHED PURSUANT TO PART B OF ARTICLE III  
OF AWARD OF ARBITRATION BOARD NO. 282

Great Northern Railway Company,

v.

Switchmen's Union of North America.

The following proceedings were duly had before the Neutral Member and Chairman, John H. Dorsey, Esquire, Public National Bank Building, Washington, D. C., 20005, and taken before James A. Werner, court reporter and a notary public in and for the County of Hennepin, State of Minnesota, on the 19th day of January, 1966, commencing at approximately 10:00 o'clock in the morning in the Thirteenth Floor Conference Room, Great Northern Railway Building, 175 East Fourth Street, St. Paul, Minnesota.

2 *Appearances:*

John H. Dorsey, Esquire, of the Firm of Camalier, Frosh, Nellis and Dorsey, Penthouse, Public National Bank Building, 1430 K Street, N.W., Washington, D. C. 20005, appeared as the Neutral Member and Chairman.

L. L. LaFountaine, Esquire, Staff Officer, Great Northern Railway Company, 1308 Great Northern Railway Building, 175 East Fourth Street, St. Paul, Minnesota, 55101, appeared as Carrier Member, of the Labor Relations Department.

George J. Kelley, Esquire, 408 Northwestern Bank Building, St. Paul, Minnesota, 55101, appeared as General Chairman, Switchmen's Union of North America.

• • •

WHEREUPON, the following proceedings were duly had:

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26 Chairman Dorsey: Well, ordinarily, gentlemen, upon receipt of a telegram such as Mr. Kelley (indicating) sent me, I think there would have been good and sufficient cause for the postponement but what concerns the Chair here is part four of the 282 Board Award which says:

"This award shall continue in force for two years from the date it takes effect unless the parties agree otherwise," and the legal effective date of the award was January 25, 1964.

So that two-year period is about to expire within the next few days. I believe it's next Tuesday.

27 It is a matter of common knowledge in the industry that there is a conflict between the carriers and the organizations as to whether or not any action taken by a special board such as this will have any force and effect after the termination date, notwithstanding that the Board was appointed prior to the termination date and may have been in the course of hearings or may have completed its hearings but not yet issued its award.

This is a matter that is of great concern to me.

I believe that as a Board we have an obligation to recognize the positions of the parties that are generally known as to the terminal date of jurisdiction of a board such as this and I want it fully understood that it is not up to this Board to make any legal interpretation of Award 282.

Our obligation as I see it is to, to the best of our ability, comply with Award 282 before the terminal date, if it possibly can be done.

That is, the terminal date set in Section Four of Award 282.

Now there is one way that that problem can be disposed of and you will note that after setting the two-year  
28 period there is the clause added, "Unless the parties agree otherwise."

In the light of these facts, I would grant the motion for a postponement provided the organization, through Mr.

Kelley (indicating), saw fit to agree to an extension of time provided for in Section Four of Award No. 282, until such time as this Board has had the opportunity to consider this case, hear the evidence and issue its award.

Mr. Kelley: May I reply?

Chairman Dorsey: Yes, sir.

Mr. Kelley: Several factors enter into this, other than the legal position, and we feel that this should be set off until the 24th because of this prior commitment.

• • • • •

30 Chairman Dorsey: Well, I most certainly am going to protect to the best of my ability your every right to adduce your case. That is not my matter of concern, though.

My matter of concern is when or what jurisdiction will this Board have after January 25, 1966?

We may find ourselves where we are doing something for naught, if the position that the organization is taking now is upheld.

I sympathize with your comment that the carrier has had almost two years to file these proposals. However, I think that is within the contemplation of Award 282 which we must look upon as having the force and effect of law right now and that award gives the carrier the opportunity to file at any time during the two year period.

Mr. Kelley: The organization agrees with the statement that the law does give the opportunity to the carrier to file at any time during the two year period.

We think, therefore, that the law must also give 60 days for the arbitrator to make his decision regardless of when filed.

If it's filed under this law my position would be that this 60 days was an intelligently proposed period to insure the organization and the carrier both time to present their case.

We could actually be faced with an appointment of an arbitrator on the 25th and still we feel that the law would still extend the 60 days limit to the arbitrator.

We don't think that the arbitrator, whether his award would be binding or not, as to whether he made his award in this time, I mean it's a dispute between the organization and the carrier, too, whether or not the award is  
 32 binding after this date and regardless of whether he made this award before or after, it would still exist:

If the Board's finding is after January 25, 1966, there would be no change in the position of the organization.

If you made your award on the 24th of January of 1966, for instance, our position would be identical to the position if you made it on the 27th, but the award is no longer binding regardless of when it was.

This is the technical position of the organization. Whether it will be sustained or not is something else.

• • • • •

58 Mr. Kelley: Maybe we better put this on the record.

Chairman Dorsey: Yes. It is my understanding that the neutral has asked this question:

Will you participate as a member of the Board after January 25, 1966 so the record of this Special Board may be complete, such participation would be without prejudice to whatever position the organization may take as to the validity of the hearings conducted or the award  
 59 handed down after January 25, 1966.

Is this it—Mr. LaFountaine, that is my understanding of it—is that your understanding of it, Mr. LaFountaine, and we couldn't prevent you from attacking the award at any time legally if you wanted to anyway.

Mr. Kelley: No, no, this is what I wanted to—

Chairman Dorsey: Even, as a matter of fact, if you are going to attack the legality of the award that is issued before, if it were issued before January 25, 1966.

Mr. Kelley: Yes.

Mr. LaFountaine: I think that's right. We want the organization to be able to present anything they want to on this.

• • • • •  
60 Chairman Dorsey: Well, let's go back on the record:

After hearing the arguments presented by the Board members, the Chairman grants the motion made by Mr. Kelley for a postponement until January 24th at 9:30 a.m. in the Conference Room of the Great Northern Railway Company, Saint Paul, Minnesota.

• • • • •  
EXHIBIT J

COPY

"Prior to opening the hearing this morning, the Board and counsel for the parties met in chambers and I have been authorized to read the following stipulation into the record.

It is hereby stipulated by and between the parties that the sixty days time limitation prescribed in Part B-3 of Award No. 282, within which this Special Board shall render its decision, is enlarged as follows:

One. If the parties choose not to file briefs, the decision shall be rendered within thirty days after the date on which the hearing is closed.

Two. If the parties, or either of them, choose to file a brief after the close of the hearing, the decision shall be rendered within thirty days after the date set by the Board on or before which the brief or briefs shall be filed.

Is that correct, Mr. Halloran?

Mr. Halloran: Correct, Mr. Chairman.

Chairman Dorsey: Is that correct, Mr. DeButts?

Mr. DeButts: That is correct, sir.

Chairman Dorsey: The stipulation is noted on the record."

• • • • •

## EXHIBIT L

### STIPULATION

WHEREAS, St. Louis Southwestern Railway Company, Defendant in the captioned proceeding, and Brotherhood of Railroad Trainmen, Plaintiff in such proceeding, by stipulation filed herein on February 14, 1966, have stipulated and agreed that the hearings and proceedings of the Special Board of Adjustment referred to therein, which have been adjourned sine die by the referee appointed by the National Mediation Board, shall be and are stayed pending the decision of the United States District Court for the District of Columbia in *The Akron & Barberton Belt Railroad Company et al., v. Brotherhood of Railroad Trainmen et al.*, Civil Action No. 142-66, and for a period of ten days after the written opinion of said court in said Civil Action No. 142-66 is filed, and that there is no occasion either for the Railway Company to file a response to the motion of the Brotherhood of Railroad Trainmen for a preliminary injunction or an answer to the complaint for declaratory judgment and injunction of the Board during the period covered by the stipulation, and

WHEREAS, the United States District Court for the District of Columbia in said Civil Action No. 142-66 on March 3, 1966, following a pretrial hearing on two stipulated legal questions, rendered a pretrial opinion on such questions and such action is presently set for trial on March 21, 1966.

THEREFORE, St. Louis Southwestern Railway Company and the Brotherhood of Railroad Trainmen hereby stipulate and agree that the hearings and proceedings of the Special Board of Adjustment, which the Brotherhood of



Railroad Trainmen seek by this action to enjoin, shall be and they are stayed pending the trial and decision of the United States District Court for the District of Columbia in Civil Action No. 142-66 and for a period of ten days after the final judgment of the District Court in said Civil Action No. 142-66 is led following the trial and that, without prejudice to the position of either party hereto, the running of the sixty (60) day period, prescribed in Article III, Part B(3), of the Award of Arbitration Board 282, for such Special Board of Adjustment to hold hearings and render its decision is also stayed during the period covered by this stipulation and by the stipulation filed herein on February 14, 1966. The Brotherhood of Railroad Trainmen does not agree that a decision in Civil Action No. 142-66 will dispose of all issues in this action.

St. Louis Southwestern Railway Company and the Brotherhood of Railroad Trainmen further stipulate that there is no occasion at the present time either for the Railway Company to file a response to the motion of the Brotherhood for a preliminary injunction or an answer to the complaint for declaratory judgment and injunction of the Brotherhood, and the Brotherhood consents to the Railway Company's motions for extension of time to file responses to such motion and complaint during the period covered by this stipulation.

DATED March 11th, 1966.

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## EXHIBIT M

This agreement made this 26th day of July 1965, by and between Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Harriman and Northeastern Railroad Company, The Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company, The New Orleans Terminal Company, Georgia Southern and Florida Railway Company, St. Johns River Terminal Company, Carolina and Northwestern Railway Company and employees represented by Brotherhood of Railroad Trainmen:

It Is Hereby Agreed:

I — Consist of Crews — Yard Service

(a) Carrier may operate the number of yard crews shown at each point listed below with a minimum of one foreman and one helper:

14—Atlanta	2—Rome	1—Raleigh
	2—Danville, Va.	1—Selma, N. C.
8—Macon	2—Jacksonville	1—Pinners Point
	2—Sheffield	1—Gastonia
7—Chattanooga	2—Winstom-Salem	1—Rock Hill
7—Birmingham	2—Danville, Ky.	1—Hickory
	2—Monroe	1—Dalton
5—Knoxville		1—Decatur
5—Cincinnati	1—Richmond	1—Huntsville
	1—Charleston	1—Cleveland
4—Spencer	1—Alexandria	1—Johnson City
4—Charlotte	1—Lynchburg	1—Bulls Gap
4—Columbia	1—Canton	1—Bristol
4—New Orleans	1—Anniston	1—Bessemer
4—Greensboro	1—Statesville	1—Somerset
4—Spartanburg	1—Valdosta	1—Oakdale
	1—Selma, Ala.	1—Evansville
3—Asheville	1—Mobile	1—Princeton
3—Memphis	1—Lexington	1—Huntingburg
3—Greenville	1—High Point	1—New Albany
3—E. St. Louis	1—Durham	1—Attalla
•	•	•

## II—PROTECTION—YARD SERVICE

(a) Men holding seniority as yardmen on the date of this agreement will be designated, for the purpose of this agreement, as "protected" yardmen. Yardmen employed after the date of this agreement will be designated, for the purpose of this agreement, as "unprotected" yardmen.

(b) Except as otherwise provided in this agreement, a protected yardman will retain his rights to and obligations to protect yard service for which he is qualified, as provided by rules in effect on the day prior to the date of this agreement, to the extent that such service is available to him in his seniority district, unless and until retired, discharged for cause, or otherwise removed from the seniority roster of yardmen by natural attrition; provided, that no such protected yardman shall have any right to jobs or positions that the Carrier may discontinue pursuant to the provisions of this agreement if other employment in any class of service (this includes a place on the extra board), for which such employee is qualified, is available to him in his seniority district.

(c) Unprotected yardmen have no right to jobs or positions that the Carrier may discontinue pursuant to the provisions of this agreement, but this will not prohibit the use of unprotected yardmen on those jobs if desired by the Carrier.

(d) No protected yardman will be furloughed as a result of application of this agreement.

## III—CONSIST OF CREWS—BRANCH LINES

Any 25 of the following branch line local freight crews, and any branch line local freight crews hereafter established in lieu thereof may be operated with a minimum of one trainman. Carrier will designate by bulletin notices the 25 crews to be operated with a minimum of one trainman and may change its designations from time to time in

the same manner. When Carrier makes a change from two trainmen on a crew to one trainman, or vice versa, as contemplated above, such change shall constitute a change in conditions. More than one trainman may be used on any of the designated crews at the sole option of the Carrier, either regularly or from day to day:

• • • • •

*Richmond District*

Nos. 22 & 21—Richmond-West Point and return.  
 Nos. 67-68-167-168—Keysville-E. Durham and E. Durham-Keysville via Oxford & Henderson.  
 West Point to M.P.F. 146 and return.

*Charlotte District*

Nos. 3 & 4—MP 541-MP 560-Elberton.

*Columbia District*

Nos. 79 & 80—Andrews Yard-Ninety Six and return.  
 Nos. 78 & 77—Grenville-Chappell & return.  
 Nos. 141 & 142—Union-Lockhart & return.

*Asheville District*

Nos. 68-69-66-67—Asheville-Addie & return; Asheville-Sylvia & return.  
 Nos. 70 & 71—Murphy-Addie and return.  
 Nos. 255 & 256—Rosman-Buena Vista.  
 Craggy Switcher—Asheville-Craggy & return.

*Winston-Salem District*

Nos. 82 & 83—Wintson-Salem-North Wilkesboro & return.  
 Nos. 78 & 79—Pomona-Mt. Airy & return.  
 Nos. 80 & 81—Pomona-Sanford & return.  
 Nos. 74, 75 & 76—Pomona-Siler City-Climax- Ramseur & return.

*Charleston District*

Nos. 94-95-96-97—Andrews Yard-Aiken.  
 Nos. 92 & 93—Andrews Yard-Camden & return.  
 Bowater Switcher—Rock Hill-Lancaster & return.  
 Nos. 90 & 91—Rock Hill-Camden & return.  
 Nos. 62 & 63—Rock Hill-Shelby & return.  
 Nos. 72 & 73—Marion-Shelby & return.

*Atlantic District*

Nos. 91 & 92—Inman Yard-Fort Valley.  
 Nos. 95 & 96—Griffin-Columbus & return.

*Birmingham District*

Parrish Mine Run—Parrish-MP 802 & return, including all branches.  
 Nos. 64 & 63—Parrish-Columbus, Miss. & return.  
 Russellville Mine Run—Sheffield-Delmar.  
 Jasper Mine Run—Parrish-Haleyville.

*Mobile District*

Nos. 67 & 68—Selma-Akron & return.  
 Wilton-Munford Turn—Wilton-Munford & return.  
 Selma-Wilsonville Turn—Selma-Wilsonville & return.  
 Nos. 61 & 62—Anniston-Wilton & return.  
 Local Freight—Demopolis-Eddins & return.  
 Nos. 102 & 103—Demopolis-Marion Jet. & return.  
 Nos. 84 & 85—Anniston-Forestville.  
 Nos. 83 & 90-91 & 92—Birmingham-Yellowleaf.

*Knoxville District*

Jellico-3C Local—Jellico-MP 3C & return.  
 Nos. 101 & 102—John Sevier-Maryville & return.  
 Nos. 170 & 171—John Sevier-Middlesboro.  
 Lake City Mine Run—Jellico-Powell.  
 Jellico Mine Runs Nos. 1 & 2—No. 1 Jellico-Clinton;  
 No. 2 Jellico-Fonde.  
 Middlesboro Mine Run—Middlesboro-Taswell & return.  
 Nos. 60 & 61—Appalachia-St. Charles & return.

*Macon District*

Nos. 66 & 67—Valdosta-Palatka.

*St. Louis-Louisville District*

Nos. 5 & 6—Princeton-French Lick & return.

Nos. 7 & 8—Huntingburg-Rockport & return.

Nos. 11 & 12—Lawrenceburg-Lexington & return.

Local Freight—Evansville-Youngtown Yard; (Boonville-Warrick & return.)

Local Freight—Youngtown-Evansville; (Boonville-Warrick & return.)

*H&NE*

Nos. 5 & 6—Harriman-State Mines & return.

*Anderson District*

LF #2—Anderson-Belton & return.

LM #1—Anderson-Walhalla & return.

*Albemarle District*

Nos. 67 & 68—Spencer-Albemarle.

• • • • •

IV—PROTECTION—ROAD SERVICE

(a) Men holding seniority as trainmen on the date of this agreement will be designated, for the purpose of this agreement, as "protected" trainmen. Trainmen employed after the date of this agreement will be designated, for the purpose of this agreement, as "unprotected" trainmen.

(b) Except as otherwise provided in this agreement, a protected trainman will retain his rights to and obligations to protect road service for which he is qualified, as provided by rules in effect on the day prior to the date of this agreement, to the extent that such service is available to

him in his seniority district, unless and until retired, discharged for cause, or otherwise removed from the seniority roster of trainmen by natural attrition; provided, that no such protected trainman shall have any right to jobs or positions that the Carrier may discontinue pursuant to the provisions of this agreement if other employment in any class of service (this includes a place on the extra board), for which such employee is qualified, is available to him in his seniority district.

(c) Unprotected trainmen have no right to jobs or positions that the Carrier may discontinue pursuant to the provisions of this agreement, but this will not prohibit the use of unprotected trainmen on those jobs if desired by the Carrier.

(d) No protected trainman will be furloughed as a result of application of this agreement.

#### V—EFFECT OF AGREEMENT

Crew consist rules and practices are modified by this agreement only to the extent necessary to permit the crew consist reductions specifically provided for herein.

This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III—Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282.

SIGNED AT WASHINGTON, D. C. THIS 26TH DAY OF JULY, 1965.

• • • • •



## EXHIBIT N

## AGREEMENT

THIS AGREEMENT made this 28th day of December, 1964, by and between the TENNESSEE, ALABAMA & GEORGIA RAILWAY COMPANY and its employees represented by the BROTHERHOOD OF RAILROAD TRAINMEN,

WITNESSETH: That,

WHEREAS, on or about November 2, 1959 the Class I carriers served notice on the various operating railway labor organizations seeking to revise, eliminate or abolish present and existing rules governing basis of pay and assignment of employees, use of firemen (helpers) on other than steam power, consist of road and yard crews, etc., and

WHEREAS, it is recognized and understood that Carrier signatory hereto did not serve such notice, as hereinabove described, on its employees represented by the Organization signatory hereto, and

WHEREAS, on or about September 7, 1960 the Organization signatory hereto served notice on Carrier signatory hereto, the same as that served on the Class I carriers, in the form of a "counter-proposal" to the notice served by the Class I carriers on November 2, 1959, seeking improvements in the existing wage structure and other changes regarding consist of crews, job protection, and work stabilization, and

WHEREAS, Carrier acknowledged said notice of the employees dated September 7, 1960, and through exchange of correspondence it was mutually agreed and understood between the parties signatory hereto that further negotiations concerning such request would be held in abeyance pending the outcome of national handling of similar requests between the Class I carriers and their employees, and

WHEREAS, pursuant to Public Law 88-108, 88th Congress, S. J. Res. 102, enacted August 28, 1963 an Award was issued under date of November 26, 1963 by National Mediation Board Arbitration Board No. 282 in the dispute between Class I carriers and the operating brotherhoods involving Diesel-Firemen and Crew-Consist issues, and

WHEREAS, on June 25, 1964 an agreement was made between the Class I carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees of such carriers represented by the various Operating Brotherhoods, including the Brotherhood of Railroad Trainmen, signatory hereto, covering paid holidays, expenses away from home, etc., and

WHEREAS, pursuant to mutual understanding and agreement hereinbefore mentioned negotiations were resumed at the request of employee representatives signatory hereto for the purpose of disposing of the matters involved in the aforementioned requests based on national settlement; conferences having been held on September 11, 1964, December 21, 1964, and on December 28, 1964,

• • • • •

## 2. CONSIST OF CREWS: (Award of Arbitration Board 282)

In accordance with the provisions of the Award of Arbitration Board 282, effective with the date of this agreement, December 28, 1964, the crew consist of road freight trains shall comprise not less than a conductor and one trainman, subject to the following conditions:

• • • • •

- (e) Except as modified above, all the provisions of the Agreement Schedule covering Rates of Pay and Working Rules between the Tennessee, Alabama & Georgia Railway Company and its employees represented by the Brotherhood of Railroad Trainmen,

dated April 15, 1941, shall remain in full force and effect, as well as all subsequent revisions.

• • • • •

- (g) The provisions of this Section 2 of this Agreement shall continue in effect to the same extent as if it were an award rendered in pursuance to Section III, Consist of Road and Yard Crews (other than Engine Crews), of the Award of Arbitration Board No. 282.

### 3. EFFECT OF THIS AGREEMENT:

This agreement is in settlement of the dispute growing out of notice served by the Organization signatory hereto on or about September 7, 1960, and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

• • • • •

## EXHIBIT O

### MEMORANDUM OF AGREEMENT

between

THE BROTHERHOOD OF RAILWAY TRAINMEN

and

THE TERMINAL RAILWAY — ALABAMA STATE DOCKS

### IT IS AGREED:

Pursuant to Article III of the Award of Arbitration Board No. 282 and Terminal Railway, Alabama State Docks Section 6 Notice of January 9, 1964, Article VIII of the current schedule agreement with an effective date of January 1, 1936 and revised March 1, 1955 insofar as the same applies to Yard Foreman and Yard Helpers is modified to the following extent:

• • • • •

- (9) This Agreement signed at Mobile, Alabama, this November 20, 1964 becomes effective December 1st, 1964

and shall remain in effect until January 25, 1966 and thereafter until changed in accordance with the provisions of the Railway Labor Act.

\* \* \* \* \*

# EXHIBIT P

THE COLORADO AND SOUTHERN RAILWAY COMPANY

December 22, 1965

T-1740

Mr. D. W. Hill, General Chairman,  
Brotherhood of Railroad Trainmen,  
Cooper Building,  
1009 17th Street,  
Denver, Colorado 80202

Dear Sir:

This has reference to our previous correspondence concerning your purported Section 6 notice of July 12, 1965, file T-1740, relating to crew consist:

As I previously informed you, without waiving the Carrier's position as to the prematurity and impropriety of your request, the Carrier reserved the right to file such proposals as it may consider appropriate for concurrent handling with your request when considered appropriate to do so.

We hereby give notice, under our existing agreement or agreements and pursuant to the provisions of the Railway Labor Act, that we propose to revise and supplement such agreement or agreements in accordance with the proposals set forth in "Attachment A" appended hereto, such proposals to be considered and progressed concurrently with your notice of July 12, 1965. It is suggested that the initial conference on the Carrier's proposals be held at 10:00 A.M., January 11, 1966, in Room 500—Johnson Building, 17th and Glenarm Streets, Denver, Colo-

rado, at which time we will also discuss the Organization's proposals.

Please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the initial conference are agreeable to you.

In the event that we are unable to reach an agreement upon the Organization's and Carrier's proposals at such conference, we further propose that the matter be handled on a joint national basis. In accordance with established procedure which has been followed in the railroad industry on numerous occasions during the last fifty years, if an agreement is not reached in our conferences, this Carrier will join with other carriers serving a like notice upon their employees represented by the Brotherhood of Railroad Trainmen in the creation of regional Carriers' Conference Committees which, in conjunction with the National Railway Labor Conference, will be authorized to represent it in progressing the matter to a conclusion. It is requested that you join with representatives of the employees on other carriers who are receiving like proposals in the creation of an Employes' National Conference Committee to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matter of these proposals.

Yours very truly,

(Signed) R. D. WOLFE

## ATTACHMENT A

## Consist of Crews

---

Consist of Road and Yard Crews

- A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train or yard service employees, which require the employment or use of
- (i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) in any crew used in any class of road service, including all miscellaneous and unclassified services, or
  - (ii) a stipulated number of brakemen or helpers in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply.
- B. Establish a rule to provide that
1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.
  2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

EXHIBIT Q

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

LABOR RELATIONS DEPARTMENT

LASALLE STREET STATION

CHICAGO, ILL. 60605

PHONE: WABASH 2-3200

December 30, 1965

File: L-479-C.C. (Trainmen)

cc: 36090

Mr. K. L. Brockman, General Chairman  
Brotherhood of Railroad Trainmen  
176 West Adams Street—Room 1440  
Chicago, Illinois 60603

Dear Sir:

Notice is hereby given, under our existing agreement or agreements and pursuant to the provisions of the Railway Labor Act, that we propose to revise and supplement such agreement or agreements in accordance with the proposals set forth in "Attachment A" appended hereto. It is suggested that initial conference on the carrier's proposals be held at 10:00 A.M. (C.S.T.), January 25, 1966, here in my office, Room 929, LaSalle Street Station, Chicago, Ill.

Please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the initial conference are agreeable to you.

In the event that we are unable to reach an agreement upon the carrier's proposals at such conference, we further propose that the matter be handled on a joint national basis. In accordance with established procedure which has been followed in the railroad industry on numerous occasions during the last fifty years, if an agreement is not reached in our conferences, this carrier will join with other carriers serving a like notice upon their employees represented by the Brotherhood of Railroad Trainmen in



the creation of regional Carriers' Conference Committees which, in conjunction with the National Railway Labor Conference, will be authorized to represent it in progressing the matter to a conclusion. This handling contemplates that this notice will be handled in conjunction with notices served by other carriers and by the Brotherhood of Railroad Trainmen relating to the crew consist issue.

It is requested that you join with representatives of the employees on other carriers who are receiving like proposals in the creation of an Employees' National Conference Committee to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matter of these proposals.

Yours very truly,

G. E. MALLERY

BCC: Mr. J. F. Griffin

RE: Circular No. 229-5

“ “ 6-24-7

#### ATTACHMENT A

#### Consist of Crews

---

#### Consist of Road Crews

- A. Eliminate all agreements, rules, regulations and practices however established, applicable to any class or grade of train service employees, which require the employment or use of
  - (i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) in any crew used in any class of road service, including all miscellaneous and unclassified services.

**B. Establish a rule to provide that**

1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used.

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

---

**Affidavit of Alfred F. Smith**

Comes now Alfred F. Smith, and being first duly sworn on his oath, states:

1. I am and at all times herein mentioned was the Chairman of the General Grievance Committee, Brotherhood of Railroad Trainmen, Missouri Pacific Railroad, Northern, Central and Southern Districts.

2. On June 30th, 1965, in accordance with the provisions of the Railway Labor Act, as amended, in my official capacity as General Chairman of the Brotherhood of Railroad Trainmen, I sent formal Section 6 Notices to Mr. B. W. Smith, Director of Labor Relations, Missouri Pacific Railroad Company, covering the Consist of Road and Yard Crews on the Missouri Pacific Railroad. Said Notices are attached to this affidavit as Exhibits "A" and "B" respectively. On July 8th, 1965, I received an answer from Mr. B. W. Smith on behalf of the Carrier, in which he acknowledged receipt of the Section 6 Notices and stated that it was the position of the Carrier that said Notices were premature and improper. Said letters are attached hereto as Exhibits "C" and "D".

3. I sent a letter to Mr. B. W. Smith on July 12th, 1965, pointing out that the Carrier had failed to set a date for conference and inquired of Mr. B. W. Smith whether or not the Carrier was refusing to confer on the Section 6 Notices. This letter is attached hereto as Exhibit "E". Mr. B. W. Smith informed me on July 17th, 1965, that the Carrier declined to agree to the changes set forth in the Section 6 Notices and further took the position that the Section 6 Notices served on June 30th, 1965, were not valid and again failed to set a date for conference or indicate in any way that they intended to negotiate this matter. This letter is attached hereto as Exhibit "F".

4. On August 2nd, 1965, I wrote Mr. Charles Luna, President of the Brotherhood of Railroad Trainmen, and informed him that the Carrier had refused to meet with the Organization for the purpose of discussing and negotiating the matters contained in the Section 6 Notices, and I requested that Mr. Luna invoke the services of the National Mediation Board. This letter is attached to this affidavit as Exhibit "G". On August 5th, 1965, Charles Luna, President of the Brotherhood of Railroad Trainmen, sent me a copy of a letter addressed to Mr. Thomas A. Tracy, Executive Secretary of the National Mediation Board, Washington, D. C. This letter requested the services of the National Mediation Board in this dispute. Said letter is attached hereto as Exhibit "H".

5. On August 11th, 1965, Mr. B. W. Smith, Director of Labor Relations of the Missouri Pacific Railroad Company, wrote a letter to Mr. Thomas A. Tracy, Executive Secretary of the National Mediation Board, and informed him that it was the position of the Carrier that the notices were premature and improper and could not be accepted by the Carrier. It was further stated by Mr. B. W. Smith that it was the position of the Missouri Pacific Railroad that the Mediation Board should "reject the organization's application on the basis that the notice was improper." Said

letter is attached hereto as Exhibit "I". On August 20th, 1965, Mr. Tracy requested a reply to the Carrier's position from Mr. Charles Luna, President of the Brotherhood of Railroad Trainmen. This letter is attached to this affidavit as Exhibit "J". Mr. Luna responded, reasserting the position of the Brotherhood of Railroad Trainmen on August 24th, 1965, and that letter is attached hereto as Exhibit "K". Subsequently, jurisdiction was accepted by the National Mediation Board and the Organization's application was docketed and assigned No. A-7544.

6. On September 27th and 28th, 1965, Mr. B. W. Smith sent me letters referring to the Organization's Section 6 Notices of June 30th, 1965. Mr. Smith again asserted the Railroad's position that the notices were improper and indicated that the Carrier did not intend to negotiate the questions stated in the Organization's Notices. However, Mr. B. W. Smith reserved the right to file notices on behalf of the Carrier. These letters are attached to this affidavit as Exhibits "L" and "M" respectively. On October 6th, 1965, and October 11th, 1965, I wrote Mr. B. W. Smith at the Missouri Pacific Railroad with reference to his letters of September 27th and 28th, and again informed him that it was our intention to pursue our Section 6 Notices to a final conclusion in accordance with the Railway Labor Act, and that if the Carrier decided to serve Section 6 Notices concerning matters on which they desired negotiation, these would be handled in accordance with the Railway Labor Act. These letters are attached hereto as Exhibits "N", "O" and "P".

7. On December 27th, 1965, Mr. B. W. Smith of the Missouri Pacific Railroad Company, served the Carrier's Section 6 Notice proposing changes in the rules concerning the consist of road and yard crews. It was suggested by the Carrier that in the event the parties were unable to reach an agreement, that the matter be referred to negotiation on a National basis. This letter and its Attach-

ment "A" are attached to this affidavit as Exhibit "Q". On December 30th, 1965, I wrote Mr. B. W. Smith stating that I did not agree to commit the further handling of this matter to National Conference Committees and that it was our intention to insist that the dispute be handled to a conclusion on the Missouri Pacific property. I reminded Mr. B. W. Smith of the Railroad's consistent refusal to negotiate the issues contained in the Organization's Section 6 Notices of June 30th, 1965, and again informed him of our intention to bring this matter to a conclusion with the assistance of the National Mediation Board. The initial conference for the discussion of the Carrier's Section 6 Notice was set for January 12th 1966, in the Carrier's office. My letter of December 30th, 1966, is attached hereto as Exhibit "R".

8. President Luna informed me by telegram on December 27th, 1965, that I was to meet with Mediator Frank Switzer on Thursday, December 30th, 1965, to commence mediation of the Organization's Section 6 Notices of June 30th, 1965, listed as National Mediation Board's Case No. A-7544. Subsequently, the case was postponed because the Carrier's representative was not available.

9. On January 12th, 1966, Mr. B. W. Smith and I met in his office at the Missouri Pacific Railroad, to discuss the issues contained in the Carrier's Section 6 Notice of December 27, 1965. After my initial demand concerning the settlement of these issues, Mr. B. W. Smith declined to discuss the matter any further and showed me a copy of a letter transmitting Power of Attorney to a National Carrier's Conference Committee. He was again informed of the Organization's position, that this matter will not be disposed of on a National basis and I insisted on the Organization's rights under the Railway Labor Act, to discuss and negotiate this matter on the property as an individual dispute.

10. On Monday, January 17th, 1966, Mediator A. J. Glover commenced mediation on Case No. A-7544. After

two days of mediation, it was learned that Mr. B. W. Smith had no authority to negotiate the matter. He stated at that time that authority to negotiate the questions presented in the Organization's Section 6 Notices had been transferred to the National Carrier's Conference Committee. Mr. B. W. Smith was informed by Mediator Glover that the Carrier was in violation of the Railway Labor Act and that he, Mr. Glover, would report this matter to the National Mediation Board. At that time the conference was terminated.

I, Alfred F. Smith, being duly sworn on my oath, state that the above and foregoing statements are true and correct to the best of my information, knowledge and belief.

ALFRED F. SMITH

Subscribed and sworn to before me this 22nd day of January, 1966.

JAMES T. WILLIAMSON  
*Notary Public*

My Commission Expires 10-2-67

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EXHIBIT "A"

June 30, 1965

REGISTERED

RETURN RECEIPT REQUESTED

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis, Missouri 63103

Dear Sir:

The undersigned, representative of the Brakemen of the Missouri Pacific Railroad Company, under existing agreements between management and the Brotherhood of Railroad Trainmen, has been authorized, under the laws and

rules of procedure of the Organization, to submit to you notice of desire to change, effective January 26th, 1966, the said agreements as set forth below:

Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen, which will provide that crews in passenger service, through and irregular freight service, helper service, work service and traveling switch engines, shall consist of not less than two (2) brakemen (trainmen).

Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen which will provide that local freight and mixed train service crews shall consist of not less than three (3) brakemen (trainmen).

Therefore, in accordance with the provisions of the Railway Labor Act, as amended, and current agreements covering rates of pay, rules and working conditions of the employees herein covered, you will please accept this as formal notice of our desire to change the said agreements as set forth above.

Please reply to this proposal in writing to the undersigned General Chairman within ten days, fixing date within the provisions of the Railway Labor Act when conference with you may be had for the purpose of discussing these matters.

It is the request that all lines or divisions of railway operated by the Missouri Pacific Railroad shall be included in settlement of these matters, and that any agreement reached shall apply alike to all such lines of railway.

Very truly yours,

/s/ A. F. SMITH

*General Chairman, B. of R. T.*

AFS/h

cc: C. Luna, President, BRT



EXHIBIT "B"

June 30, 1965

REGISTERED

RETURN RECEIPT REQUESTED

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis, Missouri 63103

Dear Sir:

The undersigned, representative of the Yardmen of the Missouri Pacific Railroad Company, under existing agreements between management and the Brotherhood of Railroad Trainmen, has been authorized, under the laws and rules of procedure of the Organization, to submit to you notice of desire to change, effective January 26th, 1966, the said agreements as set forth below.

Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to yard service employees, which will provide that train and yard crews in all classes of yard service, including transfer, interchange and belt line service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers).

Therefore, in accordance with the provisions of the Railway Labor Act, as amended, and current agreements covering rates of pay, rules and working conditions of the employees herein covered, you will please accept this as formal notice of our desire to change the said agreements as set forth above.

Please reply to this proposal in writing to the undersigned General Chairman within ten days, fixing date within the provisions of the Railway Labor Act when conference with you may be had for the purpose of discussing these matters.

It is the request that all lines or divisions of railway operated by the Missouri Pacific Railroad shall be included in settlement of these matters, and that any agreement reached shall apply alike to all such lines of railway.

Very truly yours,

/s/ A. F. SMITH

*General Chairman, B. of R. T.*

AFS/h

cc: C. Luna, President, BRT

---

EXHIBIT C

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY  
210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103  
TEL. AREA CODE 314 MA 1-1000

M. E. PARKS  
VICE PRESIDENT—PERSONNEL

July 8, 1965

A 320-6089  
CC 269-ARB AW-BRT

Mr. A. F. Smith  
General Chairman-BRT  
320 Buder Building  
St. Louis, Mo. 63101

Dear Sir:

This will acknowledge receipt of request contained in your letter of June 30, 1965, of desire to change the existing agreement covering train and yard service employees represented by the Brotherhood of Railroad Trainmen, as follows:

“Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties ap-

plying to brakemen, which will provide that crews in passenger service, through and irregular freight service, helper service, work service and traveling switch engines, shall consist of not less than two (2) brakemen (trainmen).

“Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen which will provide that local freight and mixed train service crews shall consist of not less than three (3) brakemen (trainmen).”

Public Law 88-108 and Arbitration Award No. 282 clearly provide that awards of crew consist special boards of adjustment or agreements reached pursuant to Section III of the Arbitration Award remain in effect unless or until changed pursuant to notices served under Section 6 of the Railway Labor Act, which notices may be served by either party *after* the expiration of the date specified in the Award.

Your organization and this carrier are parties to the Award of Arbitration Board No. 282. Your attention is directed to Part A(2) of Section III of that Award, which provides as follows:

“No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, *except by agreement, or pursuant to the provisions of this Award.*” (Italics ours)

It is the carrier's position that until the expiration of the date specified in the Award, Part A(3) of Section III

of the Award provides the only procedure for the serving of a notice by either party in connection with request for a change in the crew consist; therefore, the above-quoted request regardless of the fact that the request contemplates an effective date of January 26, 1966, is premature and improper and cannot be accepted.

Yours truly,

B. W. SMITH

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EXHIBIT D

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY  
210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103  
TEL. AREA CODE 314 MA 1-1000

M. E. PARKS  
VICE PRESIDENT—PERSONNEL

July 8, 1965

A 340-4491  
CC 269-ARB AW-BRT

Mr. A. F. Smith  
General Chairman-BRT  
320 Buder Building  
St. Louis, Mo. 63101

Dear Sir:

This will acknowledge receipt of request contained in your letter of June 30, 1965, of desire to change the existing agreement covering train and yard service employees represented by the Brotherhood of Railroad Trainmen, as follows:

“Effective January 26th, 1966, a rule shall be inserted in the respective agreements between the parties ap-

plying to yard service employees, which will provide that train and yard crews in all classes of yard service, including transfer, interchange and belt line service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers)."

Public Law 88-108 and Arbitration Award No. 282 clearly provide that awards of crew consist special boards of adjustment or agreements reached pursuant to Section III of the Arbitration Award remain in effect unless or until changed pursuant to notices served under Section 6 of the Railway Labor Act, which notices may be served by either party *after* the expiration of the date specified in the Award.

Your organization and this carrier are parties to the Award of Arbitration Board No. 282. Your attention is directed to Part A(2) of Section III of that Award, which provides as follows:

"No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, *except by agreement, or pursuant to the provisions of this Award.*" (Italics ours)

It is the carrier's position that until the expiration of the date specified in the Award, Part A(3) of Section III of the Award provides the only procedure for the serving of a notice by either party in connection with request for a

change in the crew consist; therefore, the above-quoted request regardless of the fact that the request contemplates an effective date of January 26, 1966, is premature and improper and cannot be accepted.

Yours truly,

B. W. SMITH

---

EXHIBIT E

July 12, 1965

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis 3, Missouri

Dear Sir:

This is in reply to your letter of July 8, 1965, file A 320-6089, CC 269-ARB-AW-BRT, relative to our formal Section 6 notice of June 30, 1965, in which we stated our desire to change the existing agreements covering road service employees represented by this organization to become effective January 26, 1966.

We have reviewed very carefully your position as to the propriety of our notice, and this is to advise that we disagree. There is nothing whatever in either Public Law 88-108 or the Award of Arbitration Board 282 which restrains or prohibits us from serving a new notice on this subject as a new dispute under the Railway Labor Act, and we are fully within our rights in presenting this request to you at this time for handling under the Act.

In the last paragraph of your letter, you imply that you are refusing to accept the notice, and you have failed to set a date for conference. If this means that you are

considering a refusal to confer on our Section 6 notice, I would remind you of the following:

The Congress intended that the parties who were affected by Public Law 88-108 shall, regardless of any of the provisions of that law or in the Arbitration Award, continue to bargain under the procedures of the Railway Labor Act, not only on the issues covered by the law, but likewise on any new disputes which arose between them. Secretary of Labor W. Willard Wirtz, testifying on this point before the House Committee on Interstate and Foreign Commerce in the consideration of H. J. Res. 565, page 81 of the transcript of hearings, stated:

"Mr. Broyhill. I think you have stated that this legislation covers only the present controversy. Would it be possible for new disputes between the two parties to arise and result in a shutdown despite this joint resolution or does section 6 prevent this?

"Secretary Wirtz. Section 6 does not prevent that. There is no setting aside of the procedures of the Railway Labor Act. There is only the provision that in the implementation of those procedures, really, as far as these two sets of proposals are concerned, they will come within this procedure.

"Mr. Broyhill. Then if a new dispute did arise, it would not be affected in any way by the legislation you are proposing?

"Mr. Wirtz. That is right."

Our Section 6 notice of June 30, 1965 constitutes a new dispute and is a proper notice under the Railway Labor Act. The representatives of the parties on this railroad property are obligated under the Act to conduct themselves accordingly, and we respectfully repeat our request that you name a date within the provisions of the Railway Labor

Act when conference with you may be had for the purpose of discussing these matters. Please advise promptly.

Yours very truly,

A. F. Smith  
*General Chairman*

AFS:HM

cc: C. Luna

Blind cc: John H. Haley  
J. D. Ackors  
M. S. Keith

---

EXHIBIT F

JUL 19 1965

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY  
210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103  
TEL. AREA CODE 314 MA 1-1000  
M. E. PARKS  
VICE PRESIDENT—PERSONNEL

July 17, 1965

A 340-4491

Mr. A. F. Smith  
General Chairman-BRT  
320 Buder Building  
St. Louis, Mo. 63101

Dear Sir:

This has reference to your letter of July 12, 1965, in reply to mine of July 8, 1965, concerning your purported Section 6 notice of June 30, 1965, relating to crew consist:

I have carefully reviewed your letter and am of the view that the arguments contained therein are not addressed to the objections to the notice stated in my letter of July 8, 1965, but relate to extrinsic and unrelated matter.

The procedures provided in the Railway Labor Act for the handling of Section 6 notices are not compatible with



the provisions of the Award of Arbitration Board No. 282 and cannot be made operative with respect to subject matter covered by the Award until the expiration of the two-year period referred to in Part IV of the Award. Pending that date, the only procedures available to the parties with respect to proposed changes in agreements relating to the subject matter covered by the Award is that appearing in Section III of the Award, quoted in the carrier's letter of July 8, 1965, namely, "by agreement, or pursuant to the provisions of this Award."

The proposed changes incorporated in the Section 6 notice cannot be effectuated pursuant to the "provisions of this Award", and the carrier declines to agree to such changes.

Yours truly,

B. W. SMITH

---

EXHIBIT G

August 2, 1965

Mr. Charles Luna, President  
Brotherhood of Railroad Trainmen  
1528 Standard Building  
Cleveland, Ohio 44113

Dear Sir & Brother:

I am attaching for your ready information three copies of the exchange of correspondence between this organization and the Director of Labor Relations, Missouri Pacific Railroad Company, which is in connection with the organization's request under the provisions of Section 6 of the Railway Labor Act, for a crew consist rule, to be made effective January 26, 1966.

You will note from this exchange of correspondence that the carrier has refused to meet with the organization for the purpose of discussing our request. Therefore, since these requests of the organization involve 1639 brakemen

holding seniority in road service, and 974 yardmen, and the last system agreements relative to the subject matter were made May 1st, 1924, pertaining to road service employees, and March 1st, 1927, for yard service employees, and the carrier has refused to meet with us in conference on the organizations' request, we would respectfully request that you give consideration to invoking the services of the National Mediation Board in this dispute to assist us in the settlement of same.

Fraternally yours,

A. F. Smith  
*General Chairman*

AFS/h

---

EXHIBIT H

AUG 9 1965

BROTHERHOOD OF RAILROAD TRAINMEN  
GENERAL OFFICES  
CLEVELAND, OHIO

CL-4-cps

August 5, 1965

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C. 20572

Dear Sir:

Enclosed herewith is Form NMB-2, prepared in duplicate, invoking the services of the National Mediation Board in a dispute between the Missouri Pacific Railroad Company and the Brotherhood of Railroad Trainmen in a matter described as follows:

"Employees' Section 6 notices of June 30, 1965 requesting crew consist agreement and carrier's refusal to confer on organization's request."

All efforts to dispose of this matter on the property have proven unavailing. We, therefore, respectfully request your Board take immediate jurisdiction and assign a mediator to handle at the earliest possible date.

Very truly yours,

CHARLES LUNA  
*President*

Encl.

cc: Mr. A. F. Smith, Chairman  
General Grievance Committee  
Missouri Pacific Railroad Company

---

EXHIBIT I

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY  
210 NORTH 13TH ST., ST. LOUIS, MISSOURI 63103  
TEL. AREA CODE 314 MA 1-1000  
M. E. PARKS  
VICE PRESIDENT—PERSONNEL

August 11, 1965

A 320-6089  
CC 340-4491  
320-6089-1  
340-4491-1

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C. 20572

Dear Sir:

Your letter of August 6, 1965, addressed to me as Director of Labor Relations of the Missouri Pacific Railroad Company, stating that you are in receipt of an application

for mediation from the Brotherhood of Railroad Trainmen covering a dispute between that organization and Missouri Pacific on the following subject:

“Employees’ Section 6 notices of June 30, 1965 requesting crew consist agreement and carrier’s refusal to confer on organization’s request.”

When the notice was received for crew consist agreement, the Chairman was advised that such a notice was improper and could not be served until after the expiration of the date specified in the Award of Arbitration Board No. 282. Furthermore, that even though the request contemplated an effective date of January 26, 1966, the notice was premature and improper and could not be accepted.

It is, therefore, our position that your Board should reject the organization’s application on the basis that the notice was improper for the reasons herein stated.

Yours truly,

B. W. SMITH

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EXHIBIT J

NATIONAL MEDIATION BOARD  
WASHINGTON

August 20, 1965

Mr. Charles Luna, President  
Brotherhood of Railroad Trainmen  
Standard Building  
Cleveland, Ohio 44113

Dear Mr. Luna:

Please refer to our letter to Mr. B. W. Smith, Director of Labor Relations, Missouri Pacific Railroad Company, copy to you, dated August 6, 1965, regarding dispute between that Carrier and your Organization.

This Board is now in receipt of a reply from the Carrier, dated August 11, 1965, a copy of which is enclosed for your complete information and comments.

A prompt reply would be appreciated.

Very truly yours,

THOMAS A. TRACY  
Thomas A. Tracy  
*Executive Secretary*

Enclosure

cc: Mr. B. W. Smith  
Director of Labor Relations  
Missouri Pacific Railroad Company

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EXHIBIT K

BROTHERHOOD OF RAILROAD TRAINMEN

General Offices

Cleveland, Ohio

CL:2:nmo

August 24, 1965

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C. 20572

Dear Mr. Tracy:

This is in reply to your letter of August 20, 1965, requesting our comments on the reply to your Board by Mr. B. W. Smith, Director of Labor Relations, Missouri Pacific Railroad Company, regarding the dispute between that company and this organization on the subject of crew consist.

The employee committee in this dispute has served a proper notice under Section 6 of the Act, and contrary to the arguments of the carrier, there is nothing contained in

either Public Law 88-108 or the Award which in any way negates the operation of the Railway Labor Act in a dispute which requests a change in crew consist to be effective on or after January 26, 1966. Both of those documents contemplate that the parties shall continue to negotiate on the subject of crew consist, either for a temporary interim settlement, a permanent settlement, or both. Neither the law nor the Arbitration Award prohibits the parties from serving new notices on the subject of crew consist, and we shall insist upon our right to do so.

Since a proper and valid Section 6 notice has been served, it is the request of the Brotherhood of Railroad Trainmen that the Board proceed to docket the dispute and assign a mediator as promptly as possible.

Very truly yours,

CHARLES LUNA  
*President*

cc: Mr. A. F. Smith, Chairman  
G.C.C., Missouri Pacific R.R.

EXHIBIT L

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY

210 North 13th St., St. Louis, Missouri 63103

Tel. Area Code 314 MA 1-1000

M. E. PARKS

VICE PRESIDENT—PERSONNEL

September 27, 1965

C 320-6089 340-4491 269-ARB AW-BRT

Mr. A. F. Smith  
General Chairman—BRT  
320 Buder Building  
St. Louis, Missouri 63101

Dear Sir:

Referring to my letter of July 8, 1965, acknowledging receipt of request contained in your letter of June 30, 1965 of desire to change the existing agreement covering train service employees represented by your organization, as follows:

“Effective January 26, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen, which will provide that crews in passenger service, through and irregular freight service, helper service, work service and traveling switch engines, shall consist of not less than two (2) brakemen (trainmen).

Effective January 26, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen which will provide that local freight and mixed train service crews shall consist of not less than three (3) brakemen (trainmen).”

and to subsequent correspondence in regard thereto:

Without waiving the Carrier's position, as previously outlined, as to the prematurity and impropriety of your request, the Carrier reserves the right to file such proposals as it may consider appropriate for concurrent handling with your request if or when it should be subsequently determined, either prior or subsequent to January 26, 1966, that your request may properly be progressed.

Your truly,

B. W. SMITH

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EXHIBIT M

MISSOURI PACIFIC RAILROAD COMPANY  
THE TEXAS AND PACIFIC RAILWAY COMPANY

210 North 13th St., St. Louis, Missouri 63103

Tel. Area Code 314 MA 1-1000

M. E. PARKS

VICE PRESIDENT—PERSONNEL

September 28, 1965

C 340-4491

Mr. A. F. Smith  
General Chairman—BRT  
320 Buder Building  
St. Louis, Missouri 63101

Dear Sir:

Referring to my letter of July 8, 1965, acknowledging receipt of request contained in your letter of June 30, 1965 of desire to change the existing agreement covering yard service employees represented by your organization, as follows:



“Effective January 26, 1966, a rule shall be inserted in the respective agreements between the parties applying to yard service employees, which will provide that train and yard crews in all classes of yard service, including transfer, interchange and belt line service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers).”

and to subsequent correspondence in regard thereto:

Without waiving the Carrier's position, as previously outlined, as to the prematurity and impropriety of your request, the Carrier reserves the right to file such proposals as it may consider appropriate for concurrent handling with your request if or when it should be subsequently determined, either prior or subsequent to January 26, 1966, that your request may properly be progressed.

Your truly,

B. W. SMITH

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EXHIBIT N

October 11, 1965

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis, Missouri 63103

Dear Sir:

With further reference to your letter of September 27, 1965, file C 320-6089, 340-4491, 269-ARB AW-BRT, wherein you referred to our Section 6 notice of June 30, 1965, on the subject of proposed crew consist rules, in which you state that you “reserve the right” to file such proposals as you may consider appropriate for concurrent handling.

We reserve the right to examine any such proposals as you may present when received, and to give same due con-

sideration as to propriety and relationship to the dispute arising from our requests at that time, it being our purpose to handle our notices to a final conclusion on this property under the provisions of the Railway Labor Act, as amended.

Your very truly,

/s/ A. F. SMITH

*General Chairman*

AFS:HM

cc: C. Luna

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EXHIBIT O

File—Crew Consist Rule—Road

October 6, 1965

RETURN RECEIPT REQUESTED

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company,  
Missouri Pacific Building,  
210 North Tenth Street,  
St. Louis, Missouri. 63103.

Dear Sir:

This will acknowledge receipt of your letter dated September 27, 1965, your files Nos. C-320-6089, 340-4491 and 269-ARB AB-BRT, in connection with our desire to change the existing agreement covering train service employees represented by our organization, as follows:

“Effective January 26, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen, which will provide that crews in passenger service, through and irregular freight service, helper service, work service and traveling switch engines, shall consist of not less than two (2) brakemen (trainmen).

Effective January 26, 1966, a rule shall be inserted in the respective agreements between the parties applying to brakemen which will provide that local freight and mixed train service crews shall consist of not less than three (3) brakemen (trainmen)."

I am at a loss to understand your position as outlined in your letter purporting to reserve a right which, as we understand the law, is impossible of reservation at this time. Since you declined to enter into negotiations with respect to the changes proposed in my letter of June 30, 1965 prior to July 30, 1965, any proposals which you might consider appropriate appear to us would have to be made in accordance with Section 6 of the Railway Labor Act and handled independently of our notice of June 30, 1965.

Your very truly,

A. F. SMITH  
*General Chairman*

AFS/ms  
Cc: C. Luna

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EXHIBIT P

October 11, 1965

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
210 North 13th Street  
St. Louis, Missouri 63103

Dear Sir:

With further reference to your letter of September 28, 1965, file C 340-4491, wherein you referred to our Section 6 notice of June 30, 1965, on the subject of proposed crew consist rules, in which you state that you "reserve the right" to file such proposals as you may consider appropriate for concurrent handling.

We reserve the right to examine any such proposal as you may present when received, and to give same due consideration as to propriety and relationship to the dispute arising from our requests at that time, it being our purpose to handle our notices to a final conclusion on this property under the provisions of the Railway Labor Act, as amended.

Yours very truly,

A. F. SMITH  
*General Chairman*

AFS:HM  
cc: C. Luna

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EXHIBIT Q

December 27, 1965

C 320-6089  
340-4491

Mr. A. F. Smith  
General Chairman-BRT  
320 Buder Building  
St. Louis, Mo. 63101

Dear Sir:

This has reference to our previous correspondence concerning your purported Section 6 notices of June 30, 1965, relating to crew consist in yard and road service:

As I previously informed you, without waiving the carrier's position as to the prematurity and impropriety of your request, the carrier reserved the right to file such proposals as it may consider appropriate for concurrent handling with your request when considered appropriate to do so.

We hereby give notice, under our existing agreement or agreements and pursuant to the provisions of the Railway Labor Act, that we propose to revise and supplement such

agreement or agreements in accordance with the proposals set forth in "Attachment A" appended hereto, such proposals to be considered and progressed concurrently with your notices of June 30, 1965. It is suggested that the initial conference on the carrier's proposals be held at 10:00 A.M., January 7, 1966, in my office at St. Louis, at which time we will also discuss the organization's proposals.

Please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the initial conference are agreeable to you.

In the event that we are unable to reach an agreement upon the organization's and carrier's proposals at such conference, we further propose that the matter be handled on a joint national basis. In accordance with established procedure which has been followed in the railroad industry on numerous occasions during the last fifty years, if an agreement is not reached in our conferences, this carrier will join with other carriers serving a like notice upon their employees represented by the Brotherhood of Railroad Trainmen in the creation of regional Carriers' Conference Committees which, in conjunction with the National Railway Labor Conference, will be authorized to represent it in progressing the matter to a conclusion. It is requested that you join with representatives of the employees on other carriers who are receiving like proposals in the creation of an Employees' National Conference Committee to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matter of these proposals.

Yours truly,

/s/ B. W. SMITH

# ATTACHMENT A

## CONSIST OF CREWS

### Consist of Road and Yard Crews

A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train or yard service employees, which require the employment or use of

(i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) in any crew used in any class of road service, including all miscellaneous and unclassified services, or

(ii) a stipulated number of brakemen or helpers in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply.

B. Establish a rule to provide that

1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

## EXHIBIT R

December 30, 1965

Mr. B. W. Smith, Director of Labor Relations  
Missouri Pacific Railroad Company  
Missouri Pacific Building  
St. Louis, Missouri. 63103.

Dear Sir:

This will acknowledge receipt of your letter of December 27, 1965, referring to previous correspondence concerning our crew consist notice of June 30, 1965. It is noted that you are serving notice under the provisions of the Railway Labor Act to revise agreements in accordance with the proposals set forth in "Attachment A" appended to your letter, and you request me to concur with time, date and place for holding the initial conference.

We take exception to the proposed national handling of this dispute. We are not agreeable to commit the further handling of this matter to national conference committees, and it is our intention to insist that the dispute involving your requested change in existing agreement rules in effect on this property shall be handled to a conclusion on the property under the provisions of the Railway Labor Act, as a separate dispute.

You are also reminded that you have previously refused to meet with this committee to handle our pending Section 6 Notice, in disregard of the requirements of the Railway Labor Act, and that this dispute is already listed with the National Mediation Board on the basis of your refusal to meet with the representative of the employees. It is our intention to handle that dispute separately to a conclusion on this property under the procedures of the Railway Labor Act, with due cognizance of your refusal to meet with us as required by Law.

Subject to the above exceptions and reserving all legal rights under the Railway Labor Act due to the present

posture of our pending notices, we will meet with you for the purpose of discussing your proposal at 10:00 A.M., January 12, 1966, at your office in St. Louis, Missouri.

Very truly yours,

A. F. SMITH  
General Chairman

AFS/h

Cc: Charles Luna, President BRT

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**Affidavit By James E. Wolfe**

JAMES E. WOLFE, being first duly sworn upon his oath, deposes and says:

• • • • •

17. Many of the plaintiffs in the above-entitled proceeding have received letters, dated on or after January 7, 1966, from a General Chairman of the BRT substantially in the form of the letter attached as Exhibit B hereto. In those letters, the BRT gave "formal notice" of its "demand" that the carriers, "immediately upon expiration of the Award of Arbitration Board 282 at 12:01 AM, January 26, 1966, shall proceed to take the necessary steps to arrange that the previous application of all crew consist rules under the effective agreements between the parties which were in force on January 24, 1964 (whether established by agreement, interpretation or practice) will be restored to full force and effect and complied with thereafter until and unless changed in accordance with the procedures of the Railway Labor Act, as amended." In view of the generally common positions asserted by the BRT, ORCB and SUNA in their Section 6 notices of September 7, 1960, in the negotiations over those notices and the carriers' notices of November 2, 1959, and in opposing the Award by Arbitration Board No. 282, and upon information and belief, it is my opinion that substantially the same position will be



taken by the ORCB and SUNA upon expiration of the two-year period of the Award on January 26, 1966.

• • • • •

20. Almost all of the plaintiffs who are parties to the Award by Arbitration Board No. 282 have invoked the procedures established by Section III of that Award by serving notices of proposed changes in the number of trainmen on crews in road service and in the number of brakemen or helpers on crews in yard, transfer or belt line service stipulated by existing rules. In accordance with those procedures, agreements have been reached with the defendant organizations and awards by special boards of adjustment have been made whereby the plaintiffs have been authorized to discontinue an overall total of approximately 7,574 positions. Because of the protective provisions in Part D of Section III of the Award, however, the carriers thus far have been enabled to discontinue only about half of those positions and I estimate that it will be at least two to four years from now before substantially all of such positions have in fact been discontinued. In addition to the positions which the plaintiffs already have been authorized to discontinue as aforesaid, some of the plaintiffs have initiated proceedings under Section III of the Award which have not yet been completed or contemplate the possibility of initiating such proceedings in the future, and it is expected that such proceedings will authorize the abolition of additional positions in accordance with the terms of Section III.

21. Pursuant to Section II of the Award by Arbitration Board No. 282, governing the use of firemen (helpers) on other than steam power, the carrier parties to the Award have reduced the number of firemen (helpers) in their employ by approximately 18,000 and have paid separation allowances to such employees in the aggregate amount of more than \$36,000,000. Approximately 1200 former firemen have accepted comparable employment in accordance

with Paragraph C(6) of Section II of the Award and, as therein provided, such employees are guaranteed preservation of their former earnings for five years from the respective dates on which they assumed such comparable employment. The number of fireman (helper) positions discontinued by the carriers under the Award will continue to increase until only those positions are filled which the carriers are not permitted to discontinue, as protected employees under the Award retire or are otherwise removed from employment by natural attrition.

• • • • •

### EXHIBIT B

GENERAL GRIEVANCE COMMITTEE  
BROTHERHOOD OF RAILROAD TRAINMEN  
L. & N.R.R. System

January 7, 1966

Mr. W. S. Scholl  
Director of Personnel, L&N RR  
P. O. Box 1198  
Louisville, Ky.

Dear Sir:

Section 4 of Public Law 88-108, last sentence, provides as follows:

"The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."

Section 8 of Public Law 88-108 states:

"This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of 4 for the period prescribed in that sentence."

Arbitration Board 282, in compliance with the above, decided that its Award should become effective January 25, 1964, and that

“This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise.”

The Brotherhood of Railroad Trainmen has not agreed to extend the life of the Award nor to continue same in force beyond the two year period provided by Public Law 88-108.

This letter is formal notice of our demand that the Carrier, immediately upon expiration of the Award of Arbitration Board 282 at 12:01 AM, January 26, 1966, shall proceed to take the necessary steps to arrange that the previous application of all crew consist rules under the effective agreements between the parties which were in force on January 24, 1964 (whether established by agreement, interpretation or practice) will be restored to full force and effect and complied with thereafter until and unless changed in accordance with the procedures of the Railway Labor Act, as amended. Please acknowledge receipt.

Yours very truly,

J. M. Hicks

J. M. Hicks

*General Chairman*

JMH:m

cc: Mr. Charles Luna,  
President, BRT

**Excerpts from Transcript of Proceedings, January 24, 1966**

22       The Court: It seems to me, as I construe the Act, that the only thing that could be agreed upon during the effective period of the award was a change in the termination date of the award, but not a change of rules.

Mr. Kramer: Your Honor, I suggest that the Congress has never, and there is no rational reason why the Congress should ever, prohibit the parties from negotiating.

The Court: Oh, no, of course not. Nobody ever prohibits negotiation of any kind. The question is whether negotiation is compelled.

Now, Justice Stone in the Virginia Railway case held that negotiation was compulsory, it was not just an expression of a pious wish. In that case the railroads refused to negotiate.

So we do have an interpretation of the Act that the provision about negotiation is compulsory, the parties must negotiate, but they must negotiate within the framework of the Act. And the negotiations are compulsory after notices are served, and notices could not be served while the award was in effect.

23       Mr. Kramer: Your Honor, perhaps—I don't think it's so—perhaps negotiations were not compulsory, but they certainly were not prohibited.

The Court: Oh, no, they were not prohibited.

Mr. Kramer: And we asked them to negotiate whether or not they have to. We didn't take the position they had to negotiate.

The Court: This Court would never take the position or would never rule that there exists any occasion in life on which negotiation is prohibited.

•   •   •   •   •   •   •   •   •

**Excerpts from Transcript of Proceedings, February 24, 1966**

30       The Court: There is a question in my mind  
           whether notices served by either side during the  
           pendency of the award are effective under the Railway  
           Labor Act.

      Mr. Kramer: Your Honor, I think there cannot be any  
           reasonable doubt of that.

      Now, I believe Mr. Shea lumped two things together and  
           that is why our contention may have sounded unreasonable.

      It is not our position that during the two-year period  
           we could serve notices to change the terms of the award or  
           to change crew consist issue rules during the two  
           31       years. The notices we did serve—and I think prop-  
           erly—were proposals to change the crew consist  
           rules after the expiration of the award.

      The Court: Yes, I understand that that was so.

      Mr. Kramer: And I see nothing wrong with that.

      The Court: Well, I wonder if a railroad could serve a  
           notice, for example, saying that five years from now we will  
           make certain changes. I wonder if that would be an effec-  
           tive notice under the Railway Labor Act.

      Mr. Kramer: It is commonly done. Not five years, of  
           course.

      •       •       •       •       •       •       •       •       •

39       The Court: Mr. Kramer, you need not consume  
           time with that. I am not going to hold that all that  
           the two-year period means is that they couldn't serve  
           40       notices within the two-year period. It means much  
           more than that. It means that certain actions could  
           be taken within a two-year period but cannot be taken after  
           the two-year period, that certain rights can accrue during  
           the two-year period.

      I think it would be a *reductio ad absurdum* to say that  
           the only effect of the two-year provision was that you  
           couldn't serve notices during the two-year period.

      I didn't understand Mr. Shea to make any such con-  
           tention.

Mr. Kramer: If you read his brief I assume you will see that he does.

The Court: Gentlemen, I looked at both of your briefs.

Mr. Kramer: He keeps talking about rules and procedures remain in effect.

The Court: Well, you needn't put up this man of straw and take time to knock him down because if any such contention is made by the carriers, and I didn't understand it was, it would receive very short shrift from me.

Mr. Kramer: I didn't put up the straw, Your Honor, it was there for me.

The Court: Whether you did or not, I just suggest that you would be wasting your effort to try to knock  
41 down the man of straw, whoever put it up, because if such a contention is seriously advanced, as I say, it would receive very short shrift from me.

\* \* \* \* \*

72 The Court: Under a voluntary arbitration.

But I want to make it clear, I want to clarify my own thinking. The award having terminated, you do not contend, do you, that additional affirmative steps can be taken under it or initiated under it?

Let me give you that specific illustration. There  
73 is a large group of firemen who have had between two and ten years' tenure. Under the award they could be offered comparable jobs and if they refused them they could be discharged with severance pay. If they accepted the comparable job they had a five-year guarantee.

Now, suppose there are still firemen left in that group. You do not contend that even after the award terminated they could be offered comparable jobs, do you?

I didn't think you did, but—

Mr. Shea: Well, I certainly didn't argue this in the argument which I made today.

The Court: No, you didn't.

Mr. Shea: And I don't want to urge that on the Court this morning.

The Court: I wouldn't be inclined to hold that the carriers could do that, because otherwise it will be like saying that the award is at an end but you can still act under it.

Now, the suggestion that the award created a new plateau, a new jumping off place from which steps under the Railway Labor Act can be taken, is a different proposition.

Mr. Shea: Yes; that is the thing that I am primarily urging here this morning.

\* \* \* \* \*

76 The Court: I am going to take this matter under advisement and I expect to have my decision handed down before the date of the trial, that is, March 8th, I believe.

Now I want to ask all counsel a question. For the purpose of fixing my own schedule and other commitments in other cases, about how long will the final hearing take? I am not asking a commitment from counsel, but I would like to get an idea.

Mr. Shea: My estimate was certainly not more than two days.

Mr. Kramer: I would agree with Mr. Shea, provided that you rule the entire Norris-LaGuardia Act inapplicable. If Section 8 is applicable, then there would be testimony—

77 Mr. Shea: If we have to show all the negotiation that took place, I don't know how long it would take.

\* \* \* \* \*

**Excerpts from Transcript of Proceedings, March 25 and 28, 1966**

39 The Court: I am afraid I do not follow this point.  
I suppose it is obvious that any party can serve a  
40 Section Six notice who was not a party to the Award.  
There is no controversy on that, is there?

Mr. Shea: Well, I will deal with that specifically in the case of Southern and make my argument about it. But that is the position which he is asserting.

\* \* \* \* \*

44       Therefore, I would suggest that as a matter of agreement in the Southern case they were required not to serve any notices, or any effective notices, until after the expiration of the period of the Award, until after January 25.

The Court: Is it your point, then, that by virtue of that express agreement they put themselves in the same position as though they were under the Award?

Mr. Shea: Precisely. That is exactly what they said. And if they are permitted to file and go through the procedures of Section Six notices under the Railway Labor Act at an earlier time, they can terminate at an earlier time the protected rights of the employees and vice versa, of course, as to the rights of the carrier.

So that what I say in regard to the Southern case is in virtue of their agreement the rights are identical to the rights that would have existed between the parties—

The Court: Let me ask you this.

Mr. Shea: —pursuant to—

The Court: Has the Brotherhood in the Southern Railway case attempted to serve any Section Six notices  
45       during the effective period of the Award?

Mr. Shea: Yes, That is why the issue is up.

The Court: Well, now, I have held that they do not have to serve those notices over again.

Mr. Shea: Oh, no, no.

The Court: But those notices become effective as of the termination.

Mr. Shea: Right, and when they become effective the procedures of the Railway Labor Act then have to be gone through: Negotiation, mediation, etc.

The Court: Do I understand your point to be that the Southern Railway cases come within the same category?

Mr. Shea: Quite right and by reason—in virtue of the provisions of their agreement.

•       •       •       •       •       •       •       •



46 Mr. Kramer: May it please the Court, on March 3 of this year you issued your opinion in which you announced certain principles, made certain rules.

We have the job now of applying those rulings to the various factual situations on different railroads.

The problems in applying that decision raise basically two questions: the duration of the change that was effectuated during the two-year period of the Award and the effect of Section Six notices that were served during the period of the Award.

The first category of railroads, that is, listed in the stipulation, are those where there were awards of Special Boards of Adjustment pursuant to Section Three of Award 282. It is our position, as Your Honor knows, that those changes effectuated by the awards of the Special Boards expired on January 25, 1966, and that the old rules then automatically came back.

You have held against us on that.

The Court: Yes.

Mr. Kramer: I don't propose to reargue it. If I did, I am sure you wouldn't let me.

• • • • •

**Excerpts from Transcript of Proceedings, April 6, 1966**

5 Mr. Shea: Then turning to the ordering paragraphs, paragraph one, our draft makes reference to the fact that the Award expired on January 25, 1966. Mr. Kramer, on the other hand, refers to the expiration on January 24, 1966.

The Court: I will hear Mr. Kramer on that.

Mr. Kramer: Your Honor, the Award became effective January 25, 1964. Your Honor has ruled more than once that it was effective on that date because the Brotherhood challenged the validity of the notices served pursuant to Section 3 of the Award on the ground that

6 January 25th was too soon.

Now, if the Award was effective on January 25th, 1964 and was to remain in effect for two years, then I submit it

expired at midnight of January 24, 1966 or at 12:01 a.m., on January 25th.

The Court: Just what is the practical effect of that?

Mr. Kramer: It's rather slight. The only practical effect is that there is one Award of a special board on a very small railroad which was issued on January 25th, 1966. Other than that there is no practical effect.

The Court: We have always referred in all the discussions to the 25th of January as being the expiration date.

Mr. Kramer: There have been various references to the expiration date, sometimes on January 25th or sometimes it was said that the Award continues in effect until January 25th.

The Court: Exactly, but January 25th is the date always used.

I always assumed, if it came to a matter of precision, it would be midnight of the 25th.

I am going to adopt Mr. Shea's draft.

• • • • •

10 Mr. Kramer: On page three, about the sixth line  
down, "for as long as the status created by such  
special board Awards continues." It is our position that  
the protection afforded the so-called protection employees  
continues indefinitely, even though we should later serve a  
Section 6 notice to change the status; those men would still  
—and should be successful in processing it—those  
11 men would still be protected.

The Court: "For as long as the status created by such special board Awards continues." Yes, I think there is something in what Mr. Kramer says.

Mr. Shea: Let me respond, if I may, to that, Your Honor.

All we are saying here is that as long as the terms of the Award remain in effect, that the men, of course, have their protected status. Now, as you pointed out, the only way this protected status can be changed, just as the only way the other provisions of the Award may be changed, is

by service of Section 6 notices under the Railway Labor Act.

What he is suggesting, Your Honor, is that by service of notice and the exhaustion of procedures under the Railway Labor Act they may put themselves into a position to use help, self-help for changing the crew consist rule. We may not.

The Court: No, but here is what I have in mind: Certain employees like the ten-year firemen are given life-time protection under the Award. I don't think that the parties can agree to take it away from them, and that would apply to the protected employees in the trainmen group.

Mr. Shea: Now this states the issue. I would like to direct myself, because this morning we are only  
12 dealing with the trainmen group—

The Court: I am not going to make a ruling on substantive rights. I think perhaps the best way is to strike out the words "for as long as the status created by special board Awards continues." Why not strike out those words and leave everything else there?

Mr. Shea: Let me just see how that reads, Your Honor.

(Pause)

The Court: What I have in mind, I don't want to include inadvertently any adjudications that I did not make.

Mr. Shea: No, I don't want that, but could I point this out to Your Honor: The one thing that concerns me here about this is what Mr. Kramer is arguing, you see. He is arguing that while the Brotherhood may serve its Section 6 notices and after exhausting the procedures of the Railway Labor Act they may then use self-help to increase the number on the crews as compared with the number that has been provided by the Award.

The Court: But you may do the same thing.

Mr. Shea: Well, that is all I am saying. That is the only purpose of this. That is the only purpose of this. That is to say, we can only—so long as the Award con-

tinues in effect as the prevailing rules, these men are protected.

13       The Court: I think if the words I suggest be stricken, then the way it would read is, "shall continue to enjoy the protections provided in Section III-D(2) of the Award and interpretations thereof by Arbitration Board No. 282," and stop right there.

(Pause)

Mr. Shea: Well, if the Court please, all I am interested in is the clarity of the thing.

The Court: I am not going to adjudicate something that I did not adjudicate in my opinion. I am not going to now decide as to what happens if notices are served and the proceedings under the Labor Railway Act are exhausted. All I am going to decide is that the new status continues and the vested rights continue at least until the exhaustion of remedies.

Mr. Shea: Well, that is all we are suggesting, Your Honor.

The Court: Then I think—

Mr. Shea: That is precisely—

The Court: Then I think if I strike out those words, I think the balance of the provision will carry out my decision. "Shall continue to enjoy the protections," and I am not stating when the protection will be cut off or how it may be cut off.

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#### Opinion

Francis M. Shea and Richard T. Conway, both of Washington, D. C., for the plaintiffs.

Milton Kramer, of Washington, D. C., for defendants Brotherhood of Railroad Trainmen, et al.

James D. Hill, of Washington, D. C., for defendant Order of Railway Conductors and Brakemen.

This is an action brought by a group of railroads against several organizations of railway employees for an injunction against calling a strike and for a declaratory judgment. The suit was instituted in the light of the termination of the effective period of two years, of an award of a compulsory arbitration directed by Congress in respect to certain issues in controversy between the parties. A temporary restraining order was granted at the institution of this action and has been extended by consent to continue until after the trial.

Pursuant to a pretrial order made with the consent of the parties a hearing has been held on the following two basic issues in advance of the trial: (a) the effect of the expiration of the period during which the Award of Arbitration Board No. 282 continued in force, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108; and (b) whether the Norris-LaGuardia Act is applicable to the plaintiffs' request for injunctive relief. This decision deals with these two questions.

At the outset it is desirable to analyze and summarize the somewhat complicated system prescribed by the Railway Labor Act (Act of May 20, 1926, 44 Stat. 577, as amended, 45 U.S.C. §§ 151 *et seq.*) for amicable adjustments of labor disputes in the railroad industry. The statute contains a well conceived, carefully planned, elaborate scheme for the settlement of differences between carriers and their employees by means of negotiation, mediation, and arbitration. It provides in detail certain specified steps to be pursued in chronological order when such a controversy arises. Neither employers nor employees may unilaterally make or insist on any changes in agreements affecting rates of pay, rules, or working conditions, without first exhausting the remedies provided by the Act.

The initial step to be taken either by a carrier or an organization representing employees, in the event that it desires an alteration in an existing arrangement, is to serve

a 30-days written notice of its intention to achieve the change. The time and place for the beginning of conferences between the representatives of the parties, are then to be agreed upon within ten days after the receipt of the notice. The date of the first conference must be within the 30-day period provided in the notice, Railway Labor Act, Sec. 5, 45 U.S.C. § 155.

The Act further provided for the creation of the National Mediation Board appointed by the President, Railway Labor Act, Sec. 4, 45 U.S.C. § 154. If the negotiations between the parties do not result in a settlement of the dispute, either party is authorized to invoke the assistance of the Mediation Board. In addition the Mediation Board is empowered to proffer its services on its own initiative, in case of an emergency.

If the negotiations and mediation still do not lead to an adjustment of the controversy, it may be submitted to a board of arbitration by agreement of the parties, Railway Labor Act, Sec. 7, 45 U.S.C. §§ 157, 158. While such an arbitration is purely voluntary, the statute prescribes the manner of creation and organization of such a board and the procedure to be followed by it. The award is binding and enforceable.

If either party declines to submit to arbitration and the controversy remains unsettled, and if the National Mediation Board is of the opinion that the dispute would substantially threaten to interrupt interstate commerce, the Board is required to notify the President. The Board is also to notify the parties that its mediation efforts have failed. No change may then be made by the parties for 30 days. An Emergency Board may then be appointed by the President to investigate the dispute. The Emergency Board must report to the President within 30 days from the date of its appointment. After the creation of such Board and for 30 days after the Board has made its report,

no change except by agreement may be made by the parties in the conditions out of which the dispute arose.

At the expiration of the last mentioned 30-day period the remedies provided by the Railway Labor Act are exhausted. If the dispute still remains unresolved, presumably either party may act unilaterally and resort to self help. To state it more bluntly, the railroads may then proceed to make the desired changes in rates of pay, rules or working conditions, or discharge employees whom they deem unnecessary. On the other hand, representatives of the employees may call them out on strike. Industrial strife is in the offing. If the dispute is on a sufficiently large scale, the possibilities of serious detrimental and even disastrous effects to the public, are readily envisaged. Lack of any further safeguard after the last stage of the statutory arrangement is passed, is the Achilles' heel of the enlightened and beneficent plan provided by the Railway Labor Act. This possible contingency is manifestly inescapable. It was hoped and even expected that the controversy would be settled at one of the earlier stages before the impasse is reached. In most cases the hope and the expectation proved well-founded. Unfortunately in the nationwide controversy involved in this litigation, they were not realized.<sup>1</sup>

The plan for the amicable adjustment of disputes consisting of a series of successive steps and stages that have been described, is not hortatory or precatory. It is legally

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<sup>1</sup> The Railway Labor Act also established a parallel system for the disposition of another category of controversies, known as "minor disputes", i.e., disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, as distinguished from "major disputes", i.e., controversies concerning what agreements should be reached to govern such matters. For the purpose of determining minor disputes the statute created a National Railroad Adjustment Board, whose duty is to hear and decide such disputes, and whose decisions are legally binding. Any party to such a dispute may refer it to the Adjustment Board, Railway Labor Act, Sec. 3, 45 U.S.C. § 153. In effect, a system of compulsory arbitration was created and has been in operation since 1926.



binding and enforceable, except that an arbitration cannot be compelled. The leading decision on this subject is *Virginian Railway Co. v. System Federation No. 40*, 300 U.S. 515, in which Mr. Justice Stone (later Chief Justice) wrote an historic opinion, speaking for a unanimous bench. This case breathed the spirit of life into the Railway Labor Act. It overruled the contention of a railroad company that there was no duty to negotiate pursuant to the notices referred to in the statute. The Court held that on the contrary there was an obligation enforceable by legal sanctions to act under the various provisions of the Act. Specifically the Court ruled that it was the duty of the parties to negotiate after notices were served, and that this duty was enforceable by judicial decree. It sustained an order compelling the carrier to do so. On this point Mr. Justice Stone wrote as follows (pp. 548, 552):

The statute does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences—in short, to enter into a negotiation for the settlement of labor disputes such as is contemplated by § 2, First.

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The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern.

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The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief.



These views were reiterated in *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 719, in which Mr. Justice Rutledge wrote the opinion.

The present controversy had its inception on November 2, 1959, when most of the Class 1 railroads in the United States, many of whom are plaintiffs in the present action, served notices, pursuant to Section 5 of the Railway Labor Act, on organizations of railroad employees, stating that it was their intention to eliminate numerous employees whose services had become unnecessary as a result of technological improvements. Specifically it was proposed to eliminate firemen on diesel engines in freight and yard service, and to reduce the number of members of the train crew on numerous runs. On September 7, 1960, employees' organizations served counter-notices, the purport of which indicated an intention to maintain the existing conditions. As soon as the first group of notices was served, the remedies prescribed by the Railway Labor Act were immediately brought into play: negotiations took place; the services of the Mediation Board were invoked; and eventually when arbitration was declined, an Emergency Board was created and made its report. During the intervening period, the President appointed a Special Commission which likewise made an investigation and presented a report.

With the creation of the Emergency Board and the submission of its report, all the remedies afforded by the Railway Labor Act were exhausted without avail. As the Supreme Court held in connection with this controversy, the parties were then relegated to self help in adjusting their disputes, *Brotherhood of Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284. In other words, the railroads were free to dispense with the services of numerous employees in accordance with the proposal contained in their notices

of November 2, 1959. On the other hand, the railroad employees were free to strike.<sup>2</sup>

By this time it was August, 1963. The country was confronted with the specter of a nationwide railroad strike, which would paralyze industry. Disaster and havoc were feared. Congress acted expeditiously in order to stave off such a catastrophe. A Joint Resolution was promptly passed, which became law on August 28, 1963, Public Law No. 88-108, 77 Stat. 129. It commanded a compulsory arbitration of the two principal issues in dispute between the parties.

This enactment expressly prohibited any changes in rates of pay, rules, or working conditions covered by the groups of notices respectively served by the carriers and labor organizations, except by agreement or pursuant to an arbitration award. It explicitly prohibited any strike or lock-out (Sec. 1). It directed the creation of an Arbitration Board to pass on two issues: the use of firemen on other than steam-powered locomotives in freight and yard service; and the size and composition of train crews (Sees. 2 and 3). Thus, Congress in effect ordered a compulsory arbitration of these two basic issues. It provided that the arbitration should be conducted pursuant to the applicable sections of the Railway Labor Act, 45 U.S.C. §§ 157-159. The award of the Board was to be binding on the parties. It was to be filed in the United States District Court for the District of Columbia. It was to be in effect for such period as the Arbitration Board should determine, but not to exceed two years from its effective date, unless the parties agreed otherwise. In all other respects, the statute was to expire 180 days from the date of its enactment.

The Arbitration Board, which eventually became known as Board No. 282, was constituted as required by the Joint

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<sup>2</sup> A brief history of the dispute is contained in the opinion of this Court in *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, B. & Q. Ry. Co.*, 225 F. Supp. 11, 14-15.

Resolution, held hearings, and rendered its award on November 26, 1963. The effective date of the award was January 25, 1964. Pursuant to its terms, it remained in effect until January 25, 1966, except that it was extended for a couple of months by agreement in respect to several, though not all, of the organizations of employees.

The pertinent provisions of the award may be summarized as follows. First, the Board held that firemen were no longer necessary on diesel engines in freight or yard service, except as to ten percent of the firemen, who might be needed for exceptional situations. Nevertheless, all firemen regularly employed on the effective date of the award who had a seniority of ten years or more, were to retain their status and were to continue in their employment until death, resignation, retirement, or discharge for cause. In other words, firemen in this group were accorded practically a permanent tenure for the period of their working lives. Firemen who had seniority of between two to ten years were to receive the same rights, with the qualification, however, that they might be offered other comparable positions for which they were or could become qualified. In that event they were guaranteed five years' service in their new employment. Firemen who had been hired within two years prior to the effective date of the award were not to be entitled to retain their employment or seniority rights, but if their services were terminated, they were to receive a lump sum termination allowance.

The second issue determined by the Board was to fix the size of train crews, referred to in the parlance of the industry as "crew consist". No change was to be made in any stipulated number of members of train crews except by agreement or pursuant to the provisions of the award. Any party was permitted to give notice of a proposed change and if no agreement was reached, the issue could be referred by either party for decision to a Special Board of Adjustment, to be created in the manner prescribed by

the award. A series of specific and concrete principles were formulated and prescribed by the award to be followed by these special tribunals.

There has been considerable activity pursuant to the award. Numerous firemen with less than two years' tenure have been separated from the service and received separation allowances. Many firemen who had been employed for periods from two to ten years have been offered other comparable jobs. Some of these men have accepted these offers. Others have declined to do so. In that event the termination of their employment was accompanied by a separation allowance. Some of the firemen who had more than ten years experience, in the natural order of events, retired, resigned, or died. It is not disputed that there has been a considerable reduction in the number of firemen working in freight and yard service on diesel engines. Undoubtedly, many still remain, even though the Board held that all but ten percent of the firemen were surplusage. So, too, numerous steps were taken pursuant to the award which resulted in the reduction of the size of train crews on many train runs throughout the country.

The question now arises what is the effect of the termination of the effectiveness of the award, and what may the parties do as a result of the fact that the effective period of the award has come to an end. Both the award and the special Act of Congress are silent on this point. There are several possible constructions of the Act in this regard. It is urged in behalf of the labor organizations that the moment the effectiveness of the award comes to an end, it must be deemed a nullity and the *status quo* that existed before the passage of the Joint Resolution of August 28, 1963, is restored. That *status quo* is, as urged by counsel for the labor organizations, that the rules, rates of pay, and working conditions that existed prior to the service of the notices of 1959 and 1960, respectively, came back in effect, and that parties may resort to self help to compel their

enforcement. In other words, it is contended that labor organizations may call a strike unless the railroads re-hire the same number of firemen that they had in service previously to August 28, 1963, and restore the size of every train crew all over the country to the size prevailing prior to that date. Were such a construction to be adopted, everything that has been accomplished by the award would be wiped out except that the fatal day will have been postponed for two years.

As heretofore stated, many employees have been discharged and many jobs have been abolished. It would seem unreasonable to construe the Act of Congress and the award made pursuant to it, as requiring restoration of these positions and a re-hiring of thousands of employees. More than that, if the award becomes a nullity, the permanent tenure that was granted by the award to large groups of employees would be wiped out. The vested rights of an unknown number of employees, probably large, would be immediately destroyed. This is particularly true of the firemen who had more than ten years' service. Their lifetime security would be abrogated. A question would arise whether the firemen who had accepted comparable jobs with a guaranty of five years' employment, would have a right to insist on the guaranty. Any employee who was re-hired would have to pay back the severance allowance that he had received. Such would be the logical result if the defendants' contention were adopted. As a matter of fact, it would probably be impossible to find immediately a sufficient number of qualified employees to fill the requirements that would be artificially created. Surely Arbitration Board No. 282, composed of eminent and experienced men, could not have contemplated that its work would go for naught, and that the permanent rights accorded by it to thousands of employees would be destroyed at the end of the two-year period. The conclusion is inescapable that the construction urged by the labor organizations is unreasonable and would

defeat the very purpose of the legislation and of the award. The Court rejects it.

The doctrine that all statutes should receive a sensible and reasonable construction<sup>3</sup> is equally applicable to the award involved in this case. This Court is of the opinion and concludes that the results of the termination of the effective period of the award of Board 282, are as follows.

No further steps may be taken under the award by either side after its termination date. Thus the railroads may not discharge any more firemen pursuant to the provisions of the award, and they may not initiate proceedings under the award for changing the size and composition of train crews on specified runs. They may not take any other steps under the award. So, too, no new privileges may accrue to employees under the terms of the award. On the other hand, what has been accomplished under the award remains and is not to be nullified or wiped out. Any rights that became vested under the award while it was in effect, remain vested. Thus, the firemen with seniority of more than ten years, who were granted a permanent status for their working lives, retain that status. It is not annulled. The firemen who accepted comparable jobs with a guaranty of five years' employment, preserve the guaranty. Members of train crews who were accorded permanent status under the award do not relinquish it. The employees who have received severance pay may retain the money. They are under no obligation to refund it, as they might have been were the award to be regarded as a nullity. If the award were a nullity, a serious question would arise whether an action in quasi-contract for money had and received under a mutual mistake, might not lie in behalf of the carriers against all former employees who received severance pay.

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<sup>3</sup> *United States v. Kirby*, 74 U. S. 482. *United States v. American Trucking Ass'ns.*, 310 U. S. 534.

On the other hand, the carriers have a right to maintain the status that existed on the date of the termination of the award. The vacancies caused by the separation of firemen and members of train crews pursuant to the award, may remain unfilled. To require the railroads to go out and immediately find qualified employees to fill the places that have been abolished would be not only unreasonable, but would lead to an absurdity.

The Court is further of the opinion that the steps taken under the award have resulted in the creation of a new status. The fact that the arbitration was compulsory rather than voluntary does not affect the problem. The award of the compulsory arbitration for this purpose must be regarded as taking the place of an agreement within the meaning of the Railway Labor Act. The Act should receive a liberal construction. The parties have arrived at a new plateau as a result of the proceedings under the award.

The conclusion is inescapable that since a new status has been created under the Act, neither side may take any unilateral action or resort to self help. The carrier may not change rates of pay, rules, or working conditions, including size of train crews, employment of firemen, etc., and, on the other hand, the employees may not call a strike or use other coercive measures in order to enforce their demands. If either side desires to bring about any change in the arrangements resulting from the award, it must initiate proceedings by serving notices under Section 5 of the Railway Labor Act and exhaust each step in the procedure prescribed by that statute. The status existing prior to the award is not restored.

Manifestly the Arbitration Board construed the Act as authorizing it to provide for the creation of rights during the effective period of the award that would endure thereafter. It is an elementary principle of statutory construction that the interpretation of a statute by the administrative agency that administers it, is to be accorded great



weight and should ordinarily be accepted unless obviously erroneous or unreasonable.

In view of these considerations, any threatened strike may be enjoined and reciprocally the carriers may be required by judicial decree to submit to the invocation of remedies provided by the Act.

A question was raised by counsel as to the status of the notices that some of the employees' organizations have served during the effective period of the award. The Court is of the opinion and concludes that such notices may not be deemed effective as of a date prior to the termination of the award. It would be a futile gesture, however, to require the parties to serve new notices. A reasonable interpretation of the situation is that the notices that have been served may remain, but that they become effective only on the day after the termination of the award. The various proceedings under the Railway Labor Act need not be initiated until after that time.

The second question to be determined as a result of this hearing, is whether the Norris-LaGuardia Act, 29 U.S.C. § 107 bars the granting of an injunction against a strike, and whether any provision of that Act is applicable to an application for such an injunction. At the outset it may be stated that an injunction against a strike may be properly granted to maintain the *status quo*, while the parties pursue the various steps of negotiation, mediation, or arbitration provided by the Railway Labor Act. Such an injunction is one of the means which the courts may invoke to enforce the provisions of the Railway Labor Act. Equity decrees of other types may likewise be employed for similar purposes.

Thus it was said by Circuit Judge Friendly for the Second Circuit, in *Manning v. American Airlines, Inc.*, 329 F. 2d 32, 34:

The propriety of an injunction to enforce the then unique provisions of the Railway Labor Act for main-



taining the *status quo* while the parties to a labor dispute pursue various stages of negotiation, mediation or arbitration, was established long ago.

In *Virginian Railway Co. v. System Federation No. 40*, 300 U.S. 515, 562-563, which has already been discussed in some detail, it was held in an opinion by Mr. Justice Stone that the Railway Labor Act supersedes the Norris-LaGuardia Act in the sense that the provisions of the Railway Labor Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act".

In *Brotherhood of Railroad Trainmen et al. v. Chicago R. & I.R. Co.*, 353 U.S. 30, in which Mr. Chief Justice Warren delivered the opinion for a unanimous Court, it was expressly held that the use of injunctive relief to vindicate the processes of the Railway Labor Act, is authorized, and that the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act (pp. 41-42). A similar conclusion was reached in *Brotherhood of Locomotive Engineers et al. v. Louisville & N.R. Co.*, 373 U.S. 33, 39.

The defendants rely on two cases, which however are clearly distinguishable. In *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U.S. 50, it was held that a railroad was not entitled to an injunction against a strike if it declined to subject itself to one of the remedies accorded by the Railway Labor Act, in that case the machinery for voluntary arbitration. In *Order of Railroad Telegraphers v. Chicago & N. W.R. Co.*, 362 U.S. 330, it was held that there was no basis for enjoining a strike at the behest of a railroad that had declined to negotiate, because of an erroneous view as to whether it was under a duty to negotiate concerning the subject matter involved in the dispute.

This Court finds no basis for holding that some of the provisions of the Norris-LaGuardia Act may be applicable

while others may not be. This Court reaches the conclusion that no provision of the Norris-LaGuardia Act applies to an action or an application for an injunction against a strike of railroad employees if the defendants have failed to fulfill their obligations under the Railway Labor Act.

The conclusions reached by this Court in this opinion will be embodied in the final judgment to be entered after the trial of this action.

ALEXANDER HOLTZOFF

*United States District Judge.*

March 3, 1966.

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**Oral Opinion—March 28, 1966**

PROCEEDINGS

OPINION OF THE COURT

The Court: This action was brought by a large number of railroads against several organizations of railroad employees for the purpose of securing an adjudication as to reciprocal rights of the parties following the termination of the effective period of an award of a compulsory arbitration ordered by the Congress concerning two basic controversies between the employers and the employees, namely, the question whether firemen should be eliminated from diesel powered locomotives in freight and yard service, and whether the size of train crews or crew consist, as it is denominated in the parlance of the industry, may be reduced on various runs.

The award of the Special Arbitration Board created under the authority of Congress is known as Award 282.

Two basic issues of law involved in this case were heard and determined separately in advance of the trial. The remaining issues involving largely the application of these prior rulings to specific situations, then came on for trial.

This opinion disposes of the remaining questions of fact and law.

The evidence was introduced at the trial in the form of a detailed stipulation of facts consisting of about  
117 22 pages with numerous exhibits attached thereto.

Counsel are to be highly commended for their admirable cooperation and meticulous and sedulous labors in preparing the stipulation and for proceeding in this highly effective and professional manner.

Although this action was brought originally for a permanent injunction as well as a declaratory judgment, counsel for the plaintiffs indicated, after the Court announced its earlier ruling on the two basic questions on March 3rd, 1966, that the plaintiffs would not press for an injunction at this time but desired a declaratory judgment. Accordingly, this action then proceeded and will be determined as an action for a declaratory judgment.

We shall now take up the various problems presented and argued at the trial.

The rulings about to be made must be considered in the light of the previous underlying basic opinion of March 3rd, 1966, which is to be deemed incorporated by reference.

During the effective period of Award 282, which terminated so far as the defendants in this action are concerned on January 25th, 1966, numerous reductions in train crews were authorized, either by agreements or by Special  
118 Boards of Adjustments created under Article III of Award 282. About 90 such awards of Special Boards of Adjustments are listed in the stipulation.

In its opinion of March 3rd, 1966, this Court ruled that a new status was created as a result of these awards and that this status is to be maintained after the expiration of the effective period of Award 282 and may be changed only by agreement or by first serving 30-day notices under Section 6 of the Railway Labor Act and then pursuing step by step the remedies provided by that statute.

During the same period as has just been stated, a number of agreements have been made relating to the composition and size of train crews embodying a provision that they shall continue in effect to the same extent as if they were awards of Special Boards of Adjustment created pursuant to Article III, or Section III as it is sometimes called, of Award 282.

Accordingly, it is the opinion of the Court that the same consequences attach to these agreements as to the awards of Special Boards of Adjustment. The agreements create a new status which may not be altered except by agreement or in the manner prescribed by the Railway Labor Act, as has just been stated.

119 This ruling obviously likewise applies to similar agreements which include a provision that they shall continue in effect until changed in accordance with the provisions of the Railway Labor Act. This conclusion likewise governs those agreements which provide that they shall continue in effect until January 25th, 1966 and thereafter.

Some of the agreements are silent on the question as to how long they should continue in force. The same consequences attach to them. In other words, they also create a new status that may not be modified after the expiration of Award 282 except by further agreement or by invoking the remedies provided by the Railway Labor Act, as already indicated.

There are numerous agreements referring to Award 282 which are expressly made dependent, in one way or another, in their duration, on the effective period of the basic award. Irrespective of the precise phraseology employed in each instance, they must be deemed to have been executed in the light of and in contemplation of Award 282 and as having the same effect as awards of Special Boards of Adjustment created under that award. It follows, hence, that the same consequences attach to them as to the agreements already discussed.

120 This conclusion also extends to agreements containing such provisions as that the agreement "shall remain in effect until January 25, 1966, as provided by Section IV, Duration of Arbitration Award No. 282;" or "shall remain in effect only for the duration of award of Arbitration Board 282;" or that "neither party shall serve notices under the provisions of Arbitration Award No. 282 for any change in crew consists prior to January 25th, 1966;" or "an agreement in accordance with the terms of the award of Arbitration Board 282;" or "that this agreement shall remain in effect until January 25th, 1966, with the understanding that neither party shall serve notices under the provisions of Arbitration Award No. 282 for any change in crew consists prior to January 25th, 1966;" or "that this agreement will continue in effect in accordance with Section IV, Duration of Award of Arbitration Board 282."

It is clear that all of these agreements were adjusted to the duration of the effective period of Award 282, they were made in contemplation of that Award, and the reasonable construction of these agreements, in the opinion of the Court, is that they have the same effect as awards of the Special Boards of Adjustment created under the Award, and the same consequences attach, namely, that a  
 121 new status is created which cannot be changed except in the manner already discussed.

It will be recalled that in practically every case the original controversy had its inception in notices served by carriers and counter-notices served by organizations or employees. There are a few cases, however, in which notices were served only by organizations of employees. The Court is of the opinion, however, that they too come within the purview of Award 282 and therefore the present ruling applies to them.

In Division 700, *Brotherhood of Locomotive Engineers v. National Railway Labor Arbitration Board 282*, 224 F. Supp. 366, the Court held that a carrier was not affected

by Award 282 if neither the carrier nor any of the organizations of employees served any notices under the Railway Labor Act in respect to employees of that carrier. This Court in the course of its opinion made the following observation on page 366:

“What is obviously meant by the statute”—referring to the statute creating Board 282—“is that the notices of November 2nd, 1959”—meaning the carriers’ notices—“or the notices of September 7th, 1960”—meaning the employees’ notices—“should have been outstanding throughout the period of mediation in order that the compulsory arbitration proceeding should attach to the specific parties.”

It will be observed that the Court remarked that in order that the award might be applicable it was necessary that either one of the two groups of notices should have been outstanding and not that both groups were required. To be sure, this observation is a dictum, but it expresses the view of this Court, and the Court now rules, that Award 282 applies in the case of any carrier as to which either one of the two sets of notices were outstanding.

The Southern Railway System is in a peculiar position. Its component parts were not parties to the proceedings before Arbitration Board 282 and as a result would not have been bound by its award. They entered into an agreement, however, with the Brotherhood of Railroad Trainmen on July 26th, 1965, reducing the size of various yard crews and crews on numerous branch lines. This agreement provided in Paragraph 5 that:

“This agreement shall become effective July 26th, 1965 and shall continue in effect until January 25th, 1966 and thereafter, to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III, consist of road and yard crews, of the Award of Arbitration Board No. 282.”

The conclusion necessarily follows that the same consequences attach to this agreement as do to the agreements already discussed.

A different result must be reached in respect to three agreements which contain an express provision to the effect that upon their expiration the prior rule as to crew consist would again be in full force and effect. It is clear that in these instances the express intention of the parties was to preclude the creation of a new status, but to limit the reduction of size of crews to a specific period. In these cases the Court is of the opinion that the carriers are obligated to restore the crews to their pre-existing size. These crews may be reduced only by further agreement or by proceedings under the Railway Labor Act initiated by the service of notices under Section 6.

In some instances proceedings were pending but not completed before Special Boards of Adjustment when the effective period of Award 282 came to an end on January 25th, 1965. The question is presented whether  
 124 these proceedings may continue subsequently to that date and final awards made later.

The problem is analogous to that which arises in the event of a repeal of a statute conferring jurisdiction on a court. Under such circumstances the court is not only deprived of authority to entertain future actions of the type covered by the jurisdictional act which has been repealed but also loses power to proceed in those cases covered by the act that were pending on the effective date of repeal. This principle was established in the historic case of *Ex Parte McCardle*, 7 Wallace 506. There are numerous other cases enunciating and applying the same principle. Among them are *Railroad Company v. Grant*, 98 U.S. 398; *Hallowell v. Commons*, 239 U.S. 506; *Bruner v. United States*, 343 U.S. 112. In *Railroad Company v. Grant*, Mr. Chief Justice Waite stated that:

"It is well settled that if a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law."

Such a frustration is frequently prevented by the inclusion of an express saving or reservation clause in the legislation providing for repeal.



No such clause is found either in the Act providing  
 125 for the creation of the Arbitration Board or in  
 the Award of the Board. It is not unlikely that the  
 Board was of the opinion that it was without power to  
 include such a reservation or saving clause in its Award  
 in view of the peremptory cut-off date contained in the  
 statute.

The conclusion is inescapable that all proceedings pend-  
 ing before Special Boards of Adjustment came to an end on  
 January 25th, 1966 and that no effective award could be  
 made in any of them subsequently to that date.

The Court is not unmindful of the fact that underneath  
 the prosaic questions of a somewhat technical nature,  
 seemingly, upon which it has had to rule, there are human  
 problems. The Court is not oblivious of the fact that there  
 are many employees and their families who have suffered  
 some hardship and possibly considerable hardship, it is to  
 be hoped of a temporary nature. This unfortunate situa-  
 tion is part of a much larger picture. As a result of  
 vast far-reaching technological improvements, inventions  
 and discoveries coming along within a short period of time  
 we have been going through a situation that is some-  
 what analogous and akin to the Industrial Revolution in  
 England of 150 years ago, although not quite as intense in  
 degree. The period of transition creates difficulties for  
 individuals, without doubt.

126 Fortunately, we have developed a social con-  
 sciousness that did not exist in England 150 years  
 ago and many steps have been taken, effectively, to lighten  
 the burden on individual employees and their families  
 during the period of transition. For example, the govern-  
 ment has provided for unemployment compensation and  
 other forms of social security. There are various agree-  
 ments between labor unions and employers that tide employ-  
 ees over a critical period. Board 282 has made an out-  
 standing and notable contribution in that field. Some  
 hardships will remain, without a doubt. The Court is not  
 unaware of that fact.



One of the problems is the fact that there are many employees who are unwilling to learn new skills or change occupations or are reluctant to change their homes. The old pioneer spirit seems to have been dampened. The quest for adventure that was exhibited by men and woman who crossed the prairies in covered wagons seems to have been diminished to a large degree. The spirit of the immigrant who looked around and was willing to take any job to make a living does not seem to exist to the same extent.

However, we must realize that we are dealing with human beings that have all the frailties, as well as all the good characteristics, of humanity; we are not dealing with  
127 automatons.

The Court had all this in mind and it realizes that some of these rulings will necessarily cause some hardship. The Court is gratified, however, to be cognizant of the fact that the award of Board 282 has eliminated or reduced a great many hardships that otherwise might have followed.

The Court does not want to conclude this opinion without expressing a sense of gratification at the fact that although the representatives of the carriers and the representatives of the employees fought energetically and valiantly for the rights of the parties whom they represent, as it was their duty, they nevertheless did so in a manner that was in due accord with the respect for the law and ethics and morals.

The stipulation of facts entered into by the parties, the opinion of this Court filed on March 3rd, 1966, and a transcript of the present decision, will together constitute the findings of fact and conclusions of law. Counsel may submit a judgment embodying the rulings made in these two opinions.

• • • • •

**Judgment**

Plaintiffs having filed a Complaint for Declaratory Judgment and Injunctive Relief; defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, having filed an Answer and Counterclaim; defendant Order of Railway Conductors and Brakemen having filed an Answer; the Court having issued a temporary restraining on January 24, 1966; certain legal issues having been briefed and argued by the parties pursuant to a Pretrial Order entered on January 27, 1966 and this Court having issued its written Opinion dated March 3, 1966 with respect to the said issues; the cause having been set for trial or final hearing on March 25, 1966; an order having been entered on March 23, 1966 in which all claims by plaintiffs against defendant Order of Railway Conductors and Brakemen were set for separate trial at a later date; the cause as between plaintiffs and defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen (hereinafter collectively referred to as "defendants" which term shall not include the Order of Railway Conductors and Brakemen) having come on for final hearing on March 25, 1966 on the basis of the pleadings, a Stipulation as to Facts (dated March 22, 1966) entered into by plaintiffs and defendants and certain exhibits jointly offered by plaintiffs and defendants; the issues at the final hearing have been briefed by the parties and oral argument having been had at said final hearing; the Court upon due deliberation having rendered an oral opinion on March 28, 1966, and having directed that the transcript of the said opinion, the Opinion of March 3, 1966 and the Stipulation as to Facts entered into by the parties shall constitute together the Court's findings of fact and conclusions of law,

IT IS HEREBY ORDERED, DECLARED AND ADJUDGED:

1. The period during which Section III of the Award by Arbitration Board No. 282 "shall continue in force" as between plaintiffs and defendants, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108, expired on January 25, 1966.

2. After January 25, 1966, proceedings may not be initiated under Section III of the Award with respect to proposed changes in crew-consist rules.

3. In those instances in which proceedings were initiated under Section III of the Award on or before January 25, 1966, but such proceedings were not completed as of January 25, 1966 by an agreement or an award of a special board of adjustment, the matter cannot be referred under Section III of the Award to a special board of adjustment after January 25, 1966 and a special board of adjustment constituted on or before January 25, 1966 no longer has jurisdiction of the matter after January 25, 1966. Any award issued by such a special board of adjustment after January 25, 1966 is ineffective. This ruling applies to the proceedings initiated by the Chicago and North Western Railway Company (M&STL District) described in Section I(1) of the Stipulation as to Facts, to the proceedings initiated by the Great Northern Railway Company described in Section I(2) of the Stipulation as to Facts, to the proceedings initiated by the Lake Superior Terminal and Transfer Railway Company described in Section I(3) of the Stipulation as to Facts, and to the proceedings initiated by the St. Louis Southwestern Railway Company described in Section I(4) of the Stipulation as to Facts.

4. Awards issued on or before January 25, 1966 by special boards of adjustment pursuant to Section III of the Award by Arbitration Board No. 282 created a new status which is to be maintained after January 25, 1966 until changed by

agreement or until the procedures of the Railway Labor Act (45 U.S.C. §§ 151-160) have been exhausted with respect to notices served under Section 6 of the Railway Labor Act (45 U.S.C. § 156) proposing changes in the status thus created. Unless otherwise agreed to by the parties, "protected employees," as defined in Section III-D(1) of the Award by Arbitration Board No. 282 and in interpretations thereof by the Board, shall continue to enjoy the protections provided in Section III-D(2) of the Award and in interpretations thereof by Arbitration Board No. 282 and application of the changes in crew-consist rules authorized by such special board awards is subject to the provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies to the awards by special boards of adjustment described in Section A of the Stipulation as to Facts.

5. Agreements entered into on or before January 25, 1966 pursuant to Section III of the Award by Arbitration Board No. 282, with the exception of the agreements referred to in paragraph 6 below, also created a new status which is to be maintained after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed to by the parties, "protected employees," as defined in Section III-D(1) of the Award by Arbitration Board No. 282 and in interpretations thereof by the Board, shall continue to enjoy the protections provided in Section III-D(2) of the Award and in interpretations thereof by Arbitration Board No. 282 and application of the changes in crew-consist rules authorized by such agreements is subject to the provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies to the agreements described in Section B (with the exception of the agreement referred to in paragraph 8 below), Section C, Section D, Section E and Section

G of the Stipulation as to Facts, and to the agreements described in subsections (1), (3), (4), (5), (6), (8), (9), (11), (12), and (13), of Section F of the Stipulation as to Facts.

6. Agreements entered into on or before January 25, 1966 pursuant to Section III of the Award by Arbitration Board No. 282 which contain an express provision to the effect that prior crew-consist rules shall again be in full force and effect upon the expiration of the Award by Arbitration Board No. 282 did not create a status which continued after the expiration of the Award, and such prior crew-consist rules are in effect after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under Section 6 of the Railway Labor Act proposing changes in such rules. This ruling applies to the agreements described in subsections (2), (7), and (10) of Section F of the Stipulation as to Facts.

7. A carrier and its employees represented by one of the defendants were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the carrier either served the defendant organization with the Section 6 notices of November 2, 1959 described in paragraph 8 of the Complaint or was served by the defendant organization with the Section 6 notices of September 7, 1960 described in paragraph 10 of the Complaint, or both, and such notices remained in effect throughout the period prior to the enactment of Public Law 88-108. All of the plaintiffs and their employees represented by one of the defendants, with the exception of the plaintiffs and their employees referred to in paragraph 8 below, consequently were subject to Public Law 88-108 and the Award issued thereunder, including the carriers and their employees represented by defendant Brotherhood of Railroad Trainmen referred to in Sections O and P of the Stipulation as to Facts.

8. Under the ruling set forth in paragraph 7 above as applied to the circumstances set forth in Section N of the Stipulation as to Facts, the plaintiffs identified in Section N of the Stipulation as to Facts and their employees represented by the defendant Brotherhood of Railroad Trainmen were not subject to Public Law 88-108 and the Award by Arbitration Board No. 282. Those plaintiffs and the Brotherhood of Railroad Trainmen, however, entered into an Agreement (annexed as Exhibit M to the Stipulation as to Facts), dated July 26, 1966, which states, among other things, that:

"This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III—Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282."

The said Agreement creates a new status which is to be maintained after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed by the parties, "protected yardmen" as defined in Section II(a) of the Agreement of July 26, 1965 and "protected trainmen" as defined in Section IV(a) of the Agreement of July 26, 1965, shall continue to enjoy the protections provided in Section II(b) and (d) or in Section IV(b) and (d), respectively, of the said Agreement and application of the changes in crew-consist rules authorized by such agreement is subject to the provisions of Section II and IV thereof.

9. Notices of proposed changes in crew-consist rules served pursuant to Section 6 of the Railway Labor Act, between January 25, 1964 and January 25, 1966, by a

defendant upon a plaintiff or by a plaintiff upon a defendant, did not become effective under the Railway Labor Act until January 26, 1966—the day after the expiration of the Award by Arbitration Board No. 282. This ruling applies to the notices referred to in Sections Q and R of the Stipulation as to Facts.

10. The defendants (including their lodges, divisions, locals, officers, agents, members and persons acting in concert with them) may not engage in any strikes or work stoppages over the application after January 25, 1966 of the agreements and special board awards which, under the rulings set forth above, created a new status that is to be maintained after January 25, 1966, unless and until such a defendant is entitled under the Railway Labor Act to resort to self help with respect to notices served under Section 6 of the Railway Labor Act proposing changes in the status created by such agreements and special board awards. None of the provisions of the Norris-LaGuardia Act (29 U.S.C. §§ 101-113) applies to injunctions against such strikes or work stoppages. Since plaintiffs have not pressed the prayer in their Complaint for injunctive relief, however, the Court does not determine whether injunctive relief otherwise would be warranted at this time and does not grant any injunctive relief at this time.

11. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.

12. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the plaintiffs against the defendants Brotherhood of Railroad Train-



men, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, and of the counterclaims by the said defendants against plaintiffs.

Dated: April 6, 1966.

/s/ ALEXANDER HOLTZOFF

*United States District Judge*

• • • • •

**Notice of Appeal**

Notice is hereby given that defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America, and Bill Doak Lodge, Division 584, Brotherhood of Railroad Trainmen hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on April 6, 1966.

MILTON KRAMER

*Attorney for Appellants*

*Brotherhood of Railroad*

*Trainmen, Switchmen's*

*Union of North America, and*

*Bill Doak Lodge Division*

*584, Brotherhood of Railroad*

*Trainmen*

Schoene and Kramer

1625 K Street, N.W.

Washington, D. C. 20006

April 12, 1966

• • • • •



**Notice of Cross-Appeal**

Notice is hereby given that The Akron & Barberton Belt Railroad Company and all other plaintiffs in the above-entitled action hereby cross-appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on April 6, 1966.

/s/ RICHARD T. CONWAY  
Richard T. Conway  
734 Fifteenth Street, N.W.  
Washington, D. C.

Dated: May 5, 1966

*Of Counsel:*

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Washington, D. C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 142-66

THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
*et al.*, Plaintiffs,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*, Defendants.

**Order Amending Pretrial Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation, it is hereby ordered that paragraph (6) of the Pretrial Order dated and entered in this cause on January 27, 1966, as amended by paragraph (1) of the Order Amending Pretrial Order and Extending Temporary Restraining Order dated and entered in this cause on February 25, 1966, is further amended to provide that the trial upon the Complaint shall commence on March 25, 1966.

Dated: March 17, 1966

/s/ ALEXANDER HOLTZOFF

*United States District Judge*

Consented to:

/s/ FRANCIS M. SHEA

Francis M. Shea

*Attorney for plaintiffs.*

/s/ MILTON KRAMER

Milton Kramer

*Attorney for defendants*

*Brotherhood of Railroad Trainmen,  
Switchmen's Union of North America,  
and Bill Doak Lodge Division 585,  
Brotherhood of Railroad Trainmen.*

/s/ JAMES D. HILL

James D. Hill

*Attorney for Defendant*

*Order of Railway Conductors  
and Brakemen.*

No. 20172 Brief for Appellee

107/117

**BRIEF FOR APPELLANTS**  
**United States Court of Appeals**  
for the District of Columbia Circuit

**FILED** SEP 2 1966

IN THE

**United States Court of Appeals** *Nathan Paulson*  
CLERK

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 20,152**

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants,*

v.

THE AKBON & BARBERTON BELT RAILROAD COMPANY, ET AL.,  
*Appellees.*

On Appeal from Judgment of the United States District Court  
for the District of Columbia  
**United States Court of Appeals**  
for the District of Columbia Circuit

**FILED JUN 15 1966**

*Nathan Paulson*  
CLERK

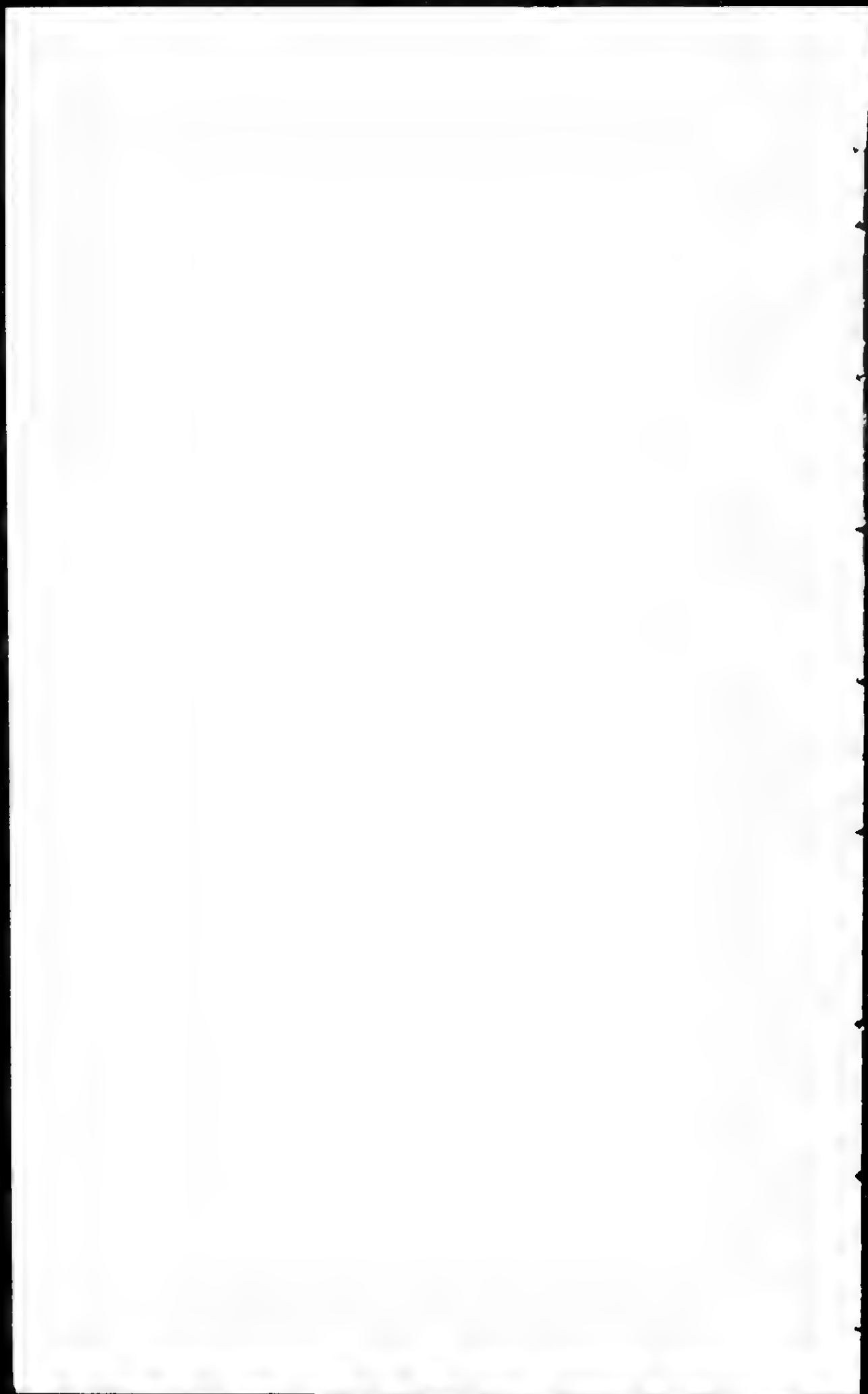
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MILTON KRAMER  
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*Counsel for Appellants*

6/16/65





### STATEMENT OF QUESTIONS PRESENTED

1. Whether agreed rules relating to the consist of train crews in road and yard service and which were modified by or pursuant to the Award of Arbitration Board No. 282 convened under Public Law 88-108 (77 Stat. 132) are again in effect upon the termination of the effective period of the Award.
2. Whether procedures established by the Award of Arbitration Board No. 282 for modifying rules governing the consist of train crews remain available after the expiration of the Award for further modification of such rules.
3. Whether proceedings initiated under Section III of the Award of Arbitration Board No. 282 but not completed before the termination of the Award could be completed thereafter.
4. Whether the effective period of the Award of Arbitration Board No. 282 which became effective on January 25, 1964, and which was to remain in effect for a period "not to exceed two years", terminated at midnight on January 24, 1966 or at midnight on January 25, 1966.
5. Whether crew-consist rules that were modified by agreements between certain of the appellant-Unions and certain of the appellee-Carriers subject to the Award, entered into during the effective period of the Award of Arbitration Board No. 282 pursuant to Section III of the Award and for such period, are again in effect upon the termination of the effective period of the Award.
6. Whether crew-consist rules that were modified by agreements between certain appellee-Carriers not subject to the Award of Arbitration Board No. 282 and certain appellant-Unions, entered into during the effective period of the Award and for such period, are again in effect upon the termination of the effective period of the Award.

7. Whether the exchange of certain correspondence between the appellee Richmond, Fredericksburg & Potomac Railroad Company and the appellant Brotherhood of Railroad Trainmen was an agreement establishing a change in prior crew-consist rules, and if so, whether the rules modified by that agreement are again in effect upon the termination of the effective period of the Award of Arbitration Board No. 282.

8. Whether a Carrier is subject to Public Law 88-108 and the Award of Arbitration Board No. 282 if it either served the Section 6 notice of November 2, 1959 or was served by the Union notice of September 7, 1960 and such notices remained in effect throughout the period prior to the enactment of Public Law 88-108, but the procedures of the Railway Labor Act had not been exhausted with respect to said notices and no strike had been threatened on the Carrier prior to the enactment of Public Law 88-108.

9. Whether notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156), served during the effective period of the Award of Arbitration Board No. 282 proposing changes in crew-consist rules to become effective upon the expiration of the period of the Award, were effective to require negotiations prior to the expiration of the effective period of the Award.

10. Whether Section 8 of the Norris-LaGuardia Act (29 U.S.C. §§ 101-115) would be applicable to a request by the Carriers for injunctive relief against a strike by the Unions under the circumstances of this case.

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20,152

---

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants*,

v.

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL.,  
*Appellees*.

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On Appeal from Judgment of the United States District Court  
for the District of Columbia

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**BRIEF FOR APPELLANTS**

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**JURISDICTIONAL STATEMENT**

On January 19, 1966, the appellees (herein referred to as the "Carriers") filed a complaint for declaratory judgment and injunctive relief requesting the District Court to determine the rights of the parties with respect to certain issues raised by the termination of the effective period of the Award of Arbitration Board No. 282 established by

Congress pursuant to Public Law 88-108 (77 Stat. 132). (JA 2-14) The appellants (herein referred to as the "Unions" or separately as the "BRT" or the "SUNA") timely filed their answer and counterclaim. (JA 18-28)

Hearings were held before the lower Court on February 24, 1966 and March 25, 1966 and the Court entered its judgment on April 6, 1966. The Unions filed their notice of appeal on April 12, 1966 (JA 181) and the Carriers filed their notice of cross-appeal on May 5, 1966. (JA 182)

This Court has jurisdiction under 28 U.S.C. Sections 1291 and 1294.

#### STATEMENT OF THE CASE

On August 28, 1964, following almost five years of failure by most of the railroads, including most of the Carriers, and the five operating Unions, including the appellants, to settle their dispute concerning the manning of trains in freight service, Congress enacted Public Law 88-108. (JA 6) The dispute involved, *inter alia*, two separate manning issues. The first issue concerned the use of firemen (helpers) on diesel locomotives (JA 4), and the second issue concerned the consist of train crews in road and yard service. (JA 3) The latter issue is the one with which the instant litigation is concerned.

The history of the failure to settle the crew-consist dispute is set forth in detail in *Brotherhood of Locomotive Firemen and Enginemen, et al. v. Chicago, Burlington & Quincy R.R., et al.*, 225 F. Supp. 11 (D.D.C., 1964), *affd.* 118 App. D.C. 100, 331 F. 2d 1020, *cert. den.* 377 U.S. 918. In brief, on November 2, 1959 most of the carriers in the country served notices under Section 6 of the Railway Labor Act (45 U.S.C. §156) of their intent to change the existing rules concerning crew consist and on September 7, 1960, the unions served counter Section 6 notices proposing different crew consist rules. The dispute was not settled by negotiations between the parties either

locally or on the national level. (JA 4-5) Thereafter, spanning a period of several years, a Presidential Railroad Commission was appointed by the President of the United States to investigate and report on the controversy, the mediatory services of the National Mediation Board were invoked and exhausted, and the President of the United States, acting under Section 10 of the Railway Labor Act (45 U.S.C. Section 160), appointed an Emergency Board to investigate and report concerning the dispute. (JA 5) No agreement was reached. The matter came to a head in July and August 1965, when the carriers announced that they intended unilaterally to put in effect the rules proposed in their November 2, 1959 notices and the unions announced that a strike would be called if the carriers did so. (JA 21) To prevent such unilateral action by the carriers and its consequent strike by the unions, Public Law 88-108 was enacted. (JA 21)

The preamble to Public Law 88-108 set forth the reasons for the legislation. Section 1 declared that neither the carriers nor the unions could make any changes except by agreement or pursuant to the arbitration award therein provided for as to any matters which were the subject of the Section 6 notices of November 2, 1959 and September 7, 1960.

Section 2 of P. L. 88-108 provided for the creation of an arbitration board, which subsequently became known as Arbitration Board No. 282. Section 3 provided (with respect to the crew-consist dispute) that the arbitration board should determine what disposition should be made of those portions of the Section 6 notices of November 2, 1959 and September 7, 1960. The section further provided that the award was to be binding on all parties to the dispute and should constitute a complete and final disposition of the issues covered by the arbitration award.

Section 4 provided that the award was to continue in force for such period as the arbitration board should deter-

mine in its award, "but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."

Section 5 of the Act provided that the arbitration board was to begin hearings within 30 days after the enactment of P.L. 88-108 and should file its award no later than 90 days after the passage of the Act, and that the Award was to become effective 60 days after filing the Award.

Section 8 provided that the Act shall expire 180 days after its enactment, except that it shall remain in effect with respect to the last sentence of Section 4 (i.e. the sentence dealing with the duration of the arbitration award) for the period prescribed in that sentence (i.e. "not to exceed two years from the date the award takes effect, unless the parties agree otherwise.")

Pursuant to the provisions of P.L. 88-108, a board of arbitration was convened, which became known as Arbitration Board No. 282. The Board issued its Award on November 26, 1963. (JA 41) Section I of the Award provided that its determination with respect to the crew-consist issue was to be a full disposition of the issue of crew consist involved in the parties' Section 6 notices of November 2, 1959 and September 7, 1960. (JA 43) Section II concerned the disposition of the issue concerning the use of firemen (helpers) on other than steam power locomotives and is not involved in this action. (JA 43-51)

Section III of the Award dealt with the crew-consist dispute. Section III A(1) remanded the crew-consist issue to the parties for negotiations on the local properties but pending the consummation of local agreements provided that certain interim rules should apply. (JA 51)

Section III A(3) provided that either party should give notice to the other of any proposed change in the pre-existing crew-consist rules, and that following such notice the parties were thereafter to meet in an attempt to reach

agreement on the notice. (JA 51) Section III Part B (1) provided that if no agreement was reached the issue involved could be referred by either party to a special board of adjustment. (JA 52) Section III Part B (3) provided that the determination by the special board of the dispute was to be binding on the parties. (JA 53)

Section IV of the Award provided that the Award was to continue in force for two years from the date it takes effect, unless the parties agree otherwise. (JA 56) Arbitration Board No. 282 issued its Award on November 26, 1964, and in accordance with Section 5 of P.L. 88-108, the Award became effective 60 days thereafter, on January 25, 1964. (JA 9)

Pursuant to Section III of the Award, almost all the Carriers served notices on the Unions of their proposed changes under Award 282 in the preexisting crew-consist rules. Negotiations were conducted on the local properties and in many instances agreements were reached. These agreements varied with respect to the duration of the agreement. (JA 65-70) In many other instances agreement was not reached and the dispute was referred to a special board of adjustment, as provided in Section III of the Award, and awards were issued. (JA 62) With respect to eight of the Carriers, comprising a group of carriers known as the Southern Railway System, although these carriers were not subject to P.L. 88-108 or the Award of Arbitration Board No. 282, crew-consist agreements were entered into between those Carriers and the BRT following the service of notices under Section 6 of the Railway Labor Act providing that, with respect to the duration of the agreement, the agreement was to continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a special board of adjustment rendered pursuant to Section III of the Award. (JA 103)

During the effective period of the Award of Arbitration Board No. 282, Section 6 notices were served by the BRT

on many of the Carriers requesting that changes in crew-consist rules be made upon the expiration of the Award. (JA 78, 116-119)

In some cases the Carriers served counter Section 6 notices on the BRT. (JA 79) The Carriers took the position, however, that both their notices and the BRT's notices were premature because no Section 6 notices could be served during the effective period of the Award and refused to negotiate with the BRT concerning the BRT notices. (JA 119-121) In other instances Carriers served Section 6 notices on the BRT during the effective period of the Award requesting changes in crew consist even though no notices had been served on them by the BRT, with no statement that such notices were premature. (JA 79)

On January 19, 1966 the Carriers (178 in number)<sup>1</sup> filed a complaint for declaratory judgment and injunctive relief against the Unions and the Order of Railway Conductors and Brakemen requesting the Court to declare that the rules and procedures established by or pursuant to the Award of Arbitration Board No. 282 continue in effect upon the termination of the Award until changed by agreement or until the procedures provided by the Railway Labor Act have been exhausted with respect to valid notices served under Section 6 of the Railway Labor Act proposing changes in such rules and procedures. The prayer for relief also requested that the Court issue injunctive relief restraining the Unions and the Order of Railway Conductors and Brakemen from striking in connection with the dispute. (JA 2-17)

On January 24, 1966 the Carriers moved the Court for a temporary restraining order which was immediately granted. (JA 35) On January 27, 1966 the parties

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<sup>1</sup> On February 3, 1966, the Carriers filed a Notice of Dismissal by certain Plaintiffs dismissing the action with respect to 33 of the Carriers. (JA 17)



entered into a Pre-Trial Stipulation, approved by the District Court, which provided that a preliminary hearing would be held to determine the issues relating to the effect of the expiration of the effective period of the Award and the applicability of the provisions of the Norris LaGuardia Act to the Carriers' request for injunctive relief. (JA 39) On February 16, 1966 the Unions filed their Answer and Counterclaim in which they requested the Court for a declaration that the rules which were modified by or pursuant to the Award were again in effect upon the termination of the Award.

A hearing was thereafter held on these issues and on March 3, 1966 the Court delivered its Opinion. (JA 153-167) The Court held that upon the termination of the effective period of the Award no further proceedings could be taken under the Award. (JA 163) However, the Court held that rules established under the Award created a "new plateau" and that such rules continued in effect following the termination of the Award. (JA 164)

The Court also held that none of the provisions of the Norris-LaGuardia Act were applicable to the Carriers' request for injunctive relief (JA 165), and that Section 6 notices served during the effective period of the Award to change crew-consist rules after the termination of the Award were not effective to initiate proceedings under the Railway Labor Act until after the termination of the Award. (JA 165)

On March 23, 1966, the Court granted the oral motion of the parties that the claims by the Carriers against the Order of Railway Conductors and Brakemen be set for a separate trial. (JA 40) At this time, counsel for the Carriers advised the Court that the Carriers would not seek injunctive relief against the Unions.

On March 25, 1966 a final hearing was held. The purpose of the hearing was to determine the application of the Court's March 3, 1966 rulings to specific situations, such

as the effect of termination of the effective period of the Award on agreements entered into during the period of the Award and on proceedings initiated before the termination of the Award but not completed at the time the Award expired. The parties filed a Stipulation As To Facts, together with exhibits, and no further evidence was introduced. (JA 62-111) On March 28, 1966 the Court rendered its oral opinion with respect to these remaining issues (JA 167-174), and on April 6, 1966 entered judgment with respect to all issues. (JA 175-181)

On April 12, 1966, the Unions filed a notice of appeal, and on May 5, 1966 the Carriers filed a notice of cross-appeal. On May 31, 1966, this Court granted the parties' joint motion to consolidate the two appeals, and granting the parties' proposed briefing schedule. The briefing schedule calls for the Unions to file the initial brief on the issues.

#### **STATUTES INVOLVED**

The pertinent provisions of the statutes involved in this case are set forth in the Appendix, *infra*.

#### **STATEMENT OF POINTS**

1. In providing for the creation of Arbitration Board No. 282 with the power to modify the preexisting crew-consist rules, Congress provided that the rules and procedures so established be in effect only for a two-year period at the end of which, if the parties had not otherwise agreed, the rules in effect prior thereto are again in effect. The District Court erred in finding that the rules established by or pursuant to the Award continue after the termination of the Award, but the court was correct in determining that the procedures established by the Award for changing crew-consist rules terminated upon the expiration of the Award.

2. The District Court correctly determined that proceedings, initiated under Section III of the Award of

Arbitration Board No. 282 but not completed before the termination of the Award, could not be completed thereafter.

3. The Award of Arbitration Board No. 282 became effective on January 25, 1964. Pursuant to the provisions of P.L. 88-108 and the Award, the rules were to remain in effect for two years. The two-year period expired on January 24, 1966. The District Court erred in finding that the Award expired January 25, 1966.

4. With the exception of those agreements providing that they were to continue in effect until changed in accordance with the procedures of the Railway Labor Act, all the other agreements entered into between the Carriers and the Unions pursuant to Section III of the Award of Arbitration Board No. 282 terminated on January 25, 1966, upon the expiration of the Award, and upon termination of the Award rules in effect prior to such agreements are automatically again in effect. The District Court erred in finding that, with the exception of three agreements, rules established by all other agreements continue in effect after the termination of the Award.

5. The crew-consist agreements entered between Carriers not subject to P.L. 88-108 nor the Award of Arbitration Board No. 282 and which provide that they were to continue in effect until January 25, 1966 and thereafter to the same extent as if they were awards of special boards of adjustment rendered pursuant to Section III of the Award, terminated at the expiration of the Award and the rules in effect prior to such agreements are automatically again in effect. The District Court erred in finding that the crew-consist rules established by such agreements continue in effect after the termination of the Award.

6. The exchange of correspondence between the Richmond, Fredericksburg & Potomac Railroad Company and the BRT shows that either no crew-consist agreement

was consummated, or if an agreement was reached that the agreement terminated upon the expiration of the Award, and the crew-consist rules in effect prior to the Award are automatically again in effect. The District Court erred in finding that there was an agreement and that the crew-consist rules established by the agreement continue in effect after the termination of the Award.

7. A Carrier was not subject to P.L. 88-108 nor the Award of Arbitration Board No. 282 unless it served the November 2, 1959 Section 6 notice on one of the Unions, the notice remained in effect throughout the period prior to the enactment of P.L. 88-108, the procedures of the Railway Labor Act had been exhausted with respect to such notice, and a strike by the Unions had been threatened on such Carriers. The District Court erred in finding that a Carrier was subject to P.L. 88-108 and the Award if no more happened than it served the Section 6 notice of November 2, 1959, or was served with the Section 6 notice of September 7, 1960, and either notice was in effect prior to the enactment of P.L. 88-108.

8. Notices served under Section 6 of the Railway Labor Act during the effective period of the Award of Arbitration Board No. 282 to change crew-consist rules at the expiration of the Award were immediately effective to require negotiations under the Railway Labor Act. The District Court erred in finding that such notices were not effective until after the expiration of the Award.

9. The Carriers' refusal to negotiate with the Unions during the period of the Award deprived them of any right to injunctive relief by reason of Section 8 of the Norris-LaGuardia Act. The District Court erred in finding that no provision of the Norris-LaGuardia Act would be applicable to the Carriers' request for injunctive relief.

### SUMMARY OF ARGUMENT

1. The rules that were modified by or pursuant to the Award of Arbitration Board No. 282 created pursuant to P.L. 88-108 are automatically again in effect upon the expiration of that Award and continue to apply until changed by agreement or until the procedures of the Railway Labor Act have been invoked and exhausted. This conclusion is required by the language of P.L. 88-108 and the Award, and the legislative history of P.L. 88-108 including the committee report describing the bill and the message of the President of the United States to Congress requesting the legislation.

2. The jurisdiction of special boards of adjustment, convened under Section III of the Award of Arbitration Board No. 282, derives from the Award. Upon the termination of the Award, their jurisdiction ceases to exist and proceedings not completed when the Award terminated may not be completed thereafter.

3. The Award of Arbitration Board No. 282 became effective on January 25, 1964. P.L. 88-108 and the Award both provide that the Award was to remain in effect for no more than two years. The Award thus expired no later than 12:01 A.M. January 25, 1966.

4. With the exception of crew-consist agreements entered into between the parties pursuant to Section III of the Award of Arbitration Board No. 282 which specified that they were to remain in effect until changed in accordance with the procedures of the Railway Labor Act, all crew-consist agreements entered into pursuant to Section III of the Award have termination dates which correspond to termination of the Award. The agreements were interim agreements and upon the expiration of the interim the rules in effect prior thereto were again in effect.

5. Crew-consist agreements between Carriers not subject to P.L. 88-108 nor the Award of Arbitration Board

was consummated, or if an agreement was reached that the agreement terminated upon the expiration of the Award, and the crew-consist rules in effect prior to the Award are automatically again in effect. The District Court erred in finding that there was an agreement and that the crew-consist rules established by the agreement continue in effect after the termination of the Award.

7. A Carrier was not subject to P.L. 88-108 nor the Award of Arbitration Board No. 282 unless it served the November 2, 1959 Section 6 notice on one of the Unions, the notice remained in effect throughout the period prior to the enactment of P.L. 88-108, the procedures of the Railway Labor Act had been exhausted with respect to such notice, and a strike by the Unions had been threatened on such Carriers. The District Court erred in finding that a Carrier was subject to P.L. 88-108 and the Award if no more happened than it served the Section 6 notice of November 2, 1959, or was served with the Section 6 notice of September 7, 1960, and either notice was in effect prior to the enactment of P.L. 88-108.

8. Notices served under Section 6 of the Railway Labor Act during the effective period of the Award of Arbitration Board No. 282 to change crew-consist rules at the expiration of the Award were immediately effective to require negotiations under the Railway Labor Act. The District Court erred in finding that such notices were not effective until after the expiration of the Award.

9. The Carriers' refusal to negotiate with the Unions during the period of the Award deprived them of any right to injunctive relief by reason of Section 8 of the Norris-LaGuardia Act. The District Court erred in finding that no provision of the Norris-LaGuardia Act would be applicable to the Carriers' request for injunctive relief.

### SUMMARY OF ARGUMENT

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3. The Award of Arbitration Board No. 282 became effective on January 25, 1964. P.L. 88-108 and the Award both provide that the Award was to remain in effect for no more than two years. The Award thus expired no later than 12:01 A.M. January 25, 1966.

4. With the exception of crew-consist agreements entered into between the parties pursuant to Section III of the Award of Arbitration Board No. 282 which specified that they were to remain in effect until changed in accordance with the procedures of the Railway Labor Act, all crew-consist agreements entered into pursuant to Section III of the Award have termination dates which correspond to termination of the Award. The agreements were interim agreements and upon the expiration of the interim the rules in effect prior thereto were again in effect.

5. Crew-consist agreements between Carriers not subject to P.L. 88-108 nor the Award of Arbitration Board



No. 282 and the Unions which state that they shall remain in effect as if they were awards of special boards convened pursuant to Section III of the Award, terminate by their terms at the expiration of the Award. Such agreements were merely interim agreements to remain in effect for a short period of time and upon the termination of such agreements the rules in effect prior thereto were again in effect.

6. The exchange of correspondence between the Richmond, Fredericksburg & Potomac Railroad Company and the BRT shows that the BRT's acceptance of a proposed crew-consist agreement was conditioned upon it terminating at the expiration of the Award of Arbitration Board No. 282, at which time the rules in effect prior to the agreement were automatically again to be in effect. If the Carrier's contention that it did not propose such an agreement is correct, then no agreement was consummated and the preexisting rules were never changed and remain in effect.

7. The preamble to P.L. 88-108 sets forth the reasons for the enactment. Included are the factors that the parties to the dispute had exhausted the procedures of the Railway Labor Act and that a lawful strike was imminent. It is thus clear, that although a Carrier served the Section 6 notice of November 2, 1959 or was served by the Unions with the Section 6 notice of September 7, 1960, and such notices remained in effect during the period prior to the enactment of P.L. 88-108, the Carrier would not be subject to P.L. 88-108 unless it had been a party to all the prior proceedings which had developed into the imminent calamity of a lawful nationwide railroad strike.

8. P.L. 88-108 was enacted to allow the parties an additional two years to reach resolution of the issue of crew consist without threat of a nationwide strike. The rules established pursuant to the Award of Arbitration Board No. 282 were to expire in January 1966 and Section 6



notices served by the parties during the effective period of the Award seeking to negotiate, during the period of the Award, about the rules to be in effect upon the expiration of the Award are wholly consistent with the provisions of P.L. 88-108, the Award, and the Railway Labor Act, and were effective to require immediate negotiations.

9. The Unions requested the Carriers to negotiate concerning the rules to be in effect upon the expiration of the Award of Arbitration Board No. 282 and the Carriers refused to negotiate. Even if such negotiations were not required, the Carriers were not entitled to injunctive relief to enjoin a strike by the Unions over that dispute because of Section 8 of the Norris LaGuardia Act (29 U.S.C. § 108), depriving them of any such remedy if they rejected any available avenue of resolution of the dispute.

### ARGUMENT

#### **I. THE CREW-CONSIST RULES WHICH WERE MODIFIED BY OR PURSUANT TO THE AWARD OF ARBITRATION BOARD NO. 282 ARE AUTOMATICALLY AGAIN IN EFFECT UPON THE TERMINATION OF THAT AWARD.**

In our Statement of the Case, *supra*, we showed that many of the Carriers acting under Section III of the Award of Arbitration Board No. 282 served notices on one or more of the Unions proposing changes in the number of trainmen used in certain categories of road and yard service as required by the rules then in effect. The parties negotiated concerning the proposals as required by the Award but in many instances no agreement was reached. Thereafter, pursuant to the procedures outlined in Section III, Part B of the Award (JA 52) the Carriers referred the dispute to special boards of adjustment for resolution, and awards of such special boards were made. (JA 62)

The issue has arisen as to the effect of the termination of the Award upon the awards of such special boards. The Unions' position is that the awards of the special boards

remained in effect only for the period that the Award was effective and that upon the expiration of the Award the awards of special boards also expired and that the rules that were modified by the awards of special boards for the period of such awards, are automatically again in effect.

The District Court rejected the Unions' position. Instead, it found that notwithstanding the fact that the Award of Arbitration Board No. 282 terminated on January 25, 1966, the rules established by or pursuant to the Award created a "new plateau" and that (JA 164):

"If either side desires to bring about any change in the arrangements resulting from the award, it must initiate proceedings by serving notices under Section 6 of the Railway Labor Act and exhaust each step in the procedure prescribed by that statute. The status existing prior to the award is not restored."

The District Court's determination appears to rest on one base, namely (JA 162-163):

"The conclusion is inescapable that the construction urged by the labor organizations is unreasonable and would defeat the very purpose of the legislation and of the award."

An examination of the legislative history of P.L. 88-108, the provisions of that Act, and the Award of Arbitration Board No. 282, shows that the Unions' position is not unreasonable, and to the contrary, conforms precisely to the purpose of the legislation and the Award.

#### **A. Legislative history.**

The main reason for the enactment of P.L. 88-108 was set forth by the District Court in its Opinion of March 3, 1966. The Court stated (JA 159):

"By this time it was August, 1963. The country was confronted with the specter of a nationwide railroad strike, which would paralyze industry. Disaster

and havoc were feared. Congress acted expeditiously in order to stave off such a catastrophe. A Joint Resolution was promptly passed, which became law on August 28, 1963, Public Law 88-108, 77 Stat. 129. It commanded a compulsory arbitration of the two principal issues in dispute between the parties."

The first suggestion that legislation be passed to deal with the threatening situation was made by the President of the United States in a message to Congress on July 22, 1963. (109 Congressional Record 12397) The Supreme Court recently summarized the President's intentions in the following manner (*Bro. of Locomotive Engineers v. Chicago, R. I. & P. R.R.*, 382 U.S. 423 (1966) at 431-432):

"Pointing out the disastrous consequences that might occur to the country should a strike take place, the President recommended legislation to provide 'for an interim remedy while awaiting the results of further bargaining by the parties'. He recommended that 'for a 2-year period during which both the parties and the public can better inform themselves on this problem . . . interim work rules changes proposed by either party to which both parties cannot agree should be submitted for approval, disapproval, or modification to the Interstate Commerce Commission in accordance with the provisions and procedures of section 5 of the Interstate Commerce Act . . .' President Kennedy repeatedly emphasized to the Congress his hope that the dispute could eventually be settled by collective bargaining . . . In his message the President expressed no desire to have them pass a law that would finally and completely dispose of the problem of the number of men who should man the crew of a train, but in fact he warned Congress that 'It would be wholly inappropriate to make general and permanent changes in our labor relations statutes on this basis' and that any 'Revolutionary changes even for the better carry a high price in disruption . . . [that] might exceed the value of the improvements.'"

In the hearings on the proposed legislation, it was repeatedly emphasized that the legislation was not to have

any long-range effect but merely to afford the parties an opportunity during an additional 2-year period to settle the dispute through collective bargaining. Thus, there is the following colloquy at the Hearings before the House Committee on Interstate and Foreign Commerce on H. J. Res. No. 565, 88th Cong., 1st Sess., at pages 50-51:

"Mr. Bennett: In other words, the decision that the Commission would be given authority to reach under this proposal would be just as final, just as binding upon the parties, as that which would be reached through what you understand and define as compulsory arbitration?"

"Secretary Wirtz: Not at all, sir.

"Mr. Bennett: Is not the decision . . . final for a 2-year period?"

"Secretary Wirtz: *It is for a 2-year period. It is operative for a 2-year period* unless the parties have in the meantime reached their own agreement with respect to it." (Emphasis added.)

And again, at page 55:

"Mr. Springer: At the end of the two-year period for which the order is entered where are you then on the same rule?"

"Secretary Wirtz: *The interim rule would at that point no longer be effective.*" (Emphasis added.)

And, at page 61:

"Mr. Younger: . . . However, you say, and I quote 'That this will meet with a degree of finality.' Yet later on you say you admit there is no finality in it. That it only postpones the solution and gives time for a period of negotiations between the parties. How do you reconcile those two statements.

"Mr. Wirtz: I don't think it places any strain on the English language at all. I don't have anything mysterious in mind in saying *what this does is provide an answer which will be operative for 2 years* and

which the parties will have to accept for a 2-year period unless they agree on something else in the meantime. . . ." (Emphasis added.)

The testimony of the Carriers' representative at the hearings before the House Committee shows that the railroads considered the proposed legislation to provide for no more than an interim resolution of the dispute. There is the testimony of J. E. Wolfe, Chairman of the National Railway Labor Conference, and later one of the Carriers' representatives on Arbitration Board No. 282, at the Hearings before the House Committee, *supra*, at 551-552:

"Mr. Wolfe: We have studied the resolution very carefully. Our lawyers have studied it, our Committees have studied it. With the exceptions noted by Mr. Loomis for this record it is our conclusion that *it will as a temporary measure solve this present problem.*" (Emphasis added.)

And again, at page 570:

"Mr. Moss: . . . In other words, you are not seeking here, nor does the resolution, any elements of compulsion other than purely interim compulsion?

"Mr. Wolfe: I so understand the resolution."

Testimony given at the Hearings before the Senate Committee on Commerce on S. J. Res. No. 102, 88th Cong., 1st Session again show that all concerned believed the legislation would serve as no more than an interim remedy. Thus, the Secretary of Labor testified (at 49):

"Senator Pastore: Now as a practical question, you say that this procedure is initiated by application. The matter is heard by the ICC and the determination is made. *The determination will last only for a period of two years.* It is a temporary resolution; is that correct?

"Secretary Wirtz: I would assume, Mr. Chairman, in complete good faith within that 2-year period the parties would have worked out the resolution of this

*matter. If they would not, the effectiveness of that rule would terminate at the end of the two-year period unless other action were taken."* (Emphasis added.)

And again, the testimony of J. E. Wolfe, at the Senate Hearing (at 364):

*"... I think I agree with the description of that resolution by Mr. Wirtz, Secretary of Labor, that it does give the Interstate Commerce Commission the authority to establish interim rules. And during that period it contemplates that the parties themselves, as they eventually will have to do sometime or another, will finally dispose of these long, drawnout disputes by collective bargaining."*

The bill enacted by Congress, P.L. 88-108, differed from that suggested by the President in only one significant respect. The President suggested that the dispute be referred to the Interstate Commerce Commission, while P.L. 88-108 provided for establishment of a board of arbitration. Two of the reasons for the change are set forth in the Senate Report on S. J. Res. No. 102, S. Rept. 459, August 23, 1963. The Report states (U.S. Code Congressional and Administrative News, 88th Cong., 1st Sess., at 838):

*"Furthermore, use of the Interstate Commerce Commission to arbitrate this dispute, as suggested by the President might have been considered a precedent for the entire transportation industry. . . . However by using the form of legislation chosen herein, the committee has negated the possibility of such a conclusion."*

And, at 839:

*"... Very early in the hearings it became apparent that the brotherhoods were irreconcilably opposed to delegating this dispute to the Interstate Commerce Commission. . . . With this in mind the committee felt the use of the Interstate Commerce Commission would not serve the best interests of all parties."*

A third reason for the substitution of an arbitration board for the Interstate Commerce Commission is set forth in *Bro. of Locomotive Engineers, et al. v. Chicago, R. I. & P. R.R.*, 382 U.S. 423 (1966), at 432:

"Congress enacted the bill proposed by the President with one significant change. He had recommended that a binding determination of the issues not resolved by collective bargaining be made by the Interstate Commerce Commission. At least one brotherhood witness testified . . . that the Interstate Commerce Commission if given the power requested would declare States' full crew laws superseded by orders of the Commission. . . . Instead of that section the Act passed by Congress provided for establishment of an arbitration board. . . ."

The report of the Senate Committee on the bill as amended and enacted confirms the intended interim nature of the legislation. The report states (U.S. Code Congressional and Administrative News, 88th Cong., 1st Sess., at 840, S. Rpt. 459, August 23, 1963):

"Under the terms of the resolution, *the arbitration award would be binding for no more than 2 years*, unless the parties mutually agree to a different period. The committee has imposed this limitation in harmony with the President's recommendation, in order to closely limit the scope and impact of the resolution." (Emphasis added.)

The interim nature of the legislation was reiterated on the floors of Congress when considering the proposed legislation. In the Senate, Senator Morse stated (109 Cong. Rec. 15891):

"It is in the light of these interim rules that Senate Joint Resolution 102 would encourage and stimulate the parties to continue to bargain in order to develop final resolutions of these and of all other remaining issues . . . ."

"Stated conversely, the resolution does not authorize the Commission to approve rules which are dispositive



of the entire manning issue for the indefinite future. *The emphasis is on interim work rule procedures to be effective only until such time as the parties reach agreement regarding the entire matter or 2 years following the date the interim rule goes into effect, whichever occurs sooner.*" (Emphasis added.)

In the House debate, we find the following colloquy between representative Harris, Chairman of the House Committee on Foreign and Interstate Commerce and representative Fulton (109 Cong. Rec. 16130):

"Mr. Fulton of Pennsylvania: And at the end of a 2-year period that these arbitration rulings have been in effect, what would happen?

"Mr. Harris: As I explained a moment ago it goes back to the usual collective bargaining process.

"Mr. Fulton: *So then it is as if this resolution had never been passed at that time?*

"Mr. Harris: *That is true.*" (Emphasis added)

Moreover, the express terms of P.L. 88-108 and the Award of Arbitration Board No. 282 show that the Award was not intended to continue in effect for more than two years. P.L. 88-108 provides with respect to the award of the arbitration board that the award was to remain in effect for a period "not to exceed two years." The Award of Arbitration Board No. 282 in turn provided that the Award shall continue in force for two years from the date it took effect. (JA 56) Such provisions are clearly inconsistent with the District Court's determination that the rules established by the Award were, in effect, to be controlling for a *minimum* period of two years, and that the rules thus established created a "new plateau" which is to continue in effect upon the expiration of the Award.

The Supreme Court also has characterized P.L. 88-108 as designed to provide a disposition of the dispute only for an interim period. In *Bro. of Locomotive Engineers v. Chicago, R. I. & P.*, 382 U.S. at 433, the Court stated:



"Their award was to be a complete and final disposition of these issues for a period *not exceeding two years* from the date the awards would take effect. . . .

" . . . Congress wanted to do as little as possible in solving the dispute which was before it. . . ."  
(Emphasis added.)

We thus see that from the time the President first proposed legislation, continuing through the hearings in the Committees of the House and the Senate, the report of the Senate committee, the debates on the floors of Congress, and culminating with P.L. 88-108 and the Award, it was the intent that P.L. 88-108 serve merely as an interim solution whereby the parties would have two years additional time to settle the dispute through the processes of collective bargaining. If the parties could not solve their dispute during the two-year period, the legislative purpose would have ended in failure and the interim period afforded by the legislation for the achievement of that purpose would have come to an end.

The lower Court's conclusion that the "Construction urged by the labor organizations . . . would defeat the very purpose of the legislation" is based upon a misconception of the purpose of the legislation. As detailed above, the purpose of the legislation was not to provide a final resolution of the dispute. It was not designed to determine the number of employees necessary to man trains. It certainly was not designed to establish a "new plateau." The purpose of P.L. 88-108 was to protect the country from an impending strike and to afford the parties an additional two-year period to try to settle the dispute. In both respects the legislation accomplished its immediate purpose if not its ultimate goal that the dispute be finally resolved.

Since the legislation and the Award of Arbitration Board No. 282 have expired the interim rules created by or pursuant to the Award likewise terminated and the rules in effect prior thereto once again are in effect.

**B. The Unions' position is not unreasonable.**

In part A of this Section of the Argument we showed that the legislative history of P.L. 88-108 leads to the conclusion that Congress intended that the rules established by or pursuant to the Award were to be of an interim nature, expiring two years after the effective date of the Award, and that the rules in effect prior thereto are automatically again in effect. Since this is so, we do not believe that the issue of whether such result is or is not reasonable need be reached. Certainly, neither the parties nor the courts can alter legislation solely on the basis that it leads to unreasonable results. Should this Court, however, find it necessary to reach this issue, we show that our position is not at all unreasonable.

Underlying the District Court's determination is its belief that a resumption of the rules in effect prior to the effective period of the Award would mean the resumption of obsolete rules with the concomitant result that the Carriers would be required to hire new employees to fill thousands of positions eliminated under the Award and that Congress could never have intended that such be the result.

Initially, we find it unnecessary to argue the point of whether the rules in effect prior to the Award were obsolete since Congress in enacting P.L. 88-108 was in no way concerned with the *merits* of the dispute between the parties. P.L. 88-108 was not enacted for the benefit of the Carriers; it was enacted to prevent a nationwide rail strike. The purpose was to take action which would forestall the Carriers from putting into effect their Section 6 notices of November 2, 1959 thereby precipitating a strike by the Unions, and to afford the parties a further opportunity to finally resolve the dispute through the processes of further collective bargaining. There is nothing in the legislative history of P.L. 88-108 or the Act itself which would in any way indicate that Congress was motivated by a desire to do away with "obsolete" rules.

Indeed, P.L. 88-108 gave the board of arbitration a free hand in determining what rules would be applied for the interim two-year period. The arbitration board would have acted completely in keeping with its mandate under P.L. 88-108 if its award had directed that the rules in effect prior to the award should continue in effect for the interim two-year period, or if its award had required additional personnel to be employed.

With respect to the argument that the Unions' position is unreasonable because it would require the Carriers to rehire "thousands of employees," the facts are to the contrary. The total number of *positions* which the Carriers were authorized to discontinue under the Award is 7,574. (JA 142) Of this number only about one half of such positions were in fact discontinued. (JA 142) This leaves a total of 3,787 positions, spread among approximately 200 carriers, which have been discontinued under the Award with respect to employees represented by the Unions.

It should also be noted that the figure 3,787 represents *positions*, not *employees*. Thus in many cases, the discontinuance of a position merely means that an employee who would otherwise be assigned to such run does not receive such assignment and as a result receives less work. There is no evidence as to the actual number of employees that would have to be hired if the prior rules were again in effect. Certainly, even if the number were an aggregate of 3,787 for the 200 carriers, such number would not stagger the imagination. Certainly, such number would not be a sufficient basis to determine that the intent of Congress could not have been that the old rules are again in effect, despite its explicit language, because of the tremendous burden that would be placed upon the Carriers. Yet this precisely is the basis for the lower Court's determination that the Union's position is unreasonable.

Moreover, even if a much larger number of employees were involved and it would entail great cost to the Carriers,

such argument would not be determinative. Certainly, we have not yet reached the point where a party is entitled to relief simply because he has put himself in a situation in which it would be costly if relief were not granted to him. The Carriers chose to pursue a course of making extensive reductions in the ranks of their employees notwithstanding that their authority to do so was to depart from the agreed rules for an interim period. The Carriers are not entitled to relief merely because they took such course.

Finally, the District Court states that the Unions' position is unreasonable since it would mean that certain protective conditions that were established under the Award would be nullified. Thus, the lower Court states (JA 162):

"The vested rights of an unknown number of employees, probably large, would be immediately destroyed. This is particularly true of the firemen who had more than ten years' service. Their lifetime security would be abrogated."

This argument is specious. Even assuming, for the moment, that such employees would lose their "rights" under the Award, if the rules in effect prior to the Award were again effective and the Carriers would employ sufficient personnel to comply with such rules, there can be no doubt that, as a practical matter, every fireman with ten or more years' seniority would have little fear of unemployment. And any such argument would pertain only to the rights of firemen (helpers); trainmen received no such protective conditions.

It is thus clear that the resumption of the rules in effect prior to the effective date of the Award again upon the expiration of the Award is not only reasonable but is entirely in conformity with the provisions of P.L. 88-108 and the Award of Arbitration Board 282, and is required by the intent of Congress in enacting the legislation. It is the determination of the District Court that the rules established by or pursuant to the Award somehow outlive the expiration of the Award, that is not consistent with

the intent of the President in requesting legislation, the intent of Congress as shown by the legislative history of P.L. 88-108, and the understanding of the Supreme Court as to the duration of the rules as expressed in *Bro. of Locomotive Engineers, et al. v. Chicago, R. I. & P. R.R.*, *supra*.

**C. The procedures established by the Award terminated with the Award.**

The Carriers have appealed from the District Court's determination that the procedures for eliminating jobs established by the Award terminated with the Award. It is their contention that the District Court erred in not finding that not only do the *rules* established pursuant to the Award continue after the termination of the Award, but also the *procedures* of the Award for changing the rules likewise continue after the termination of the Award. Thus, the Carriers argue that they should be permitted to continue to serve notices under Section III of the Award to reduce the consist of crews even though the Award has terminated.

It is interesting to note that the lower Court had some difficulty in believing that the Carriers would make such a contention. During the hearing that took place on February 24, 1966, counsel for the Unions began to advance arguments against the Carriers' contention. The Court interrupted the argument to state (JA 147):

"The Court: Well, you needn't put up this man of straw and take time to knock him down because if any such contention is made by the carriers, and I didn't understand it was, it would receive very short shrift from me."

The Court thereafter questioned counsel for the Carriers as to whether such a contention was being put forward. The colloquy, in part, is as follows (JA 147-148):

"The Court: . . . But I want to make it clear, I want to clarify my own thinking. The award having

terminated, you do not contend, do you, that additional affirmative steps can be taken under it or initiated under it? . . .

"Mr. Shea: Well, I certainly didn't argue this in the argument which I made *today*.

"The Court: No, you didn't.

"Mr. Shea: And I don't want to urge that on the Court *this morning*.

"The Court: I wouldn't be inclined to hold that the carriers could do that, because otherwise it will be like saying that the award is at an end but you can still act under it. . . ." (Emphasis added)

The issue never was raised thereafter until this appeal. Apparently the lower Court believed that the Carriers were not advancing the contention since in its Opinion of March 3, 1966 the only contentions discussed are those made by the Unions.

In any event, the District Court's comment that the Carriers' argument "would be like saying that the award is at an end but you can still act under it" is clearly correct. Our disagreement with the District Court is that we cannot find a distinction between the *rules* established by or pursuant to the Award and *procedures* established by the Award. Surely the Court's statement that to contend that procedures remain in effect "would be like saying that the Award is at an end but you can still act under it" can be said with equal incredulity with respect to the contention that the rules remain in effect even though the Award has terminated.

Furthermore, the discussion above showing that Congress intended that the expiration of the Award should bring an end to the rules established by or pursuant to the Award, leads *a fortiori* to the conclusion that the procedures under the Award terminated with the Award.

**II. PROCEEDINGS INITIATED UNDER SECTION III OF THE AWARD OF ARBITRATION BOARD NO. 282 BUT NOT COMPLETED BEFORE THE TERMINATION OF THE AWARD COULD NOT BE COMPLETED THEREAFTER.**

The Carriers have appealed from the determination of the District Court that proceedings initiated under Section III of the Award of Arbitration Board No. 282 but not completed before the termination of the Award could not be completed thereafter.

The particular Carriers and circumstances involved in this issue are set forth in Section I of the Stipulation As To Facts. (JA 70) The facts show two separate factual situations, one situation where the Award terminated following the service of a notice under Section III of the Award but before a special board of adjustment had been convened, and the other situation where a special board of adjustment had convened prior to the termination of the Award but no award had issued before the termination of the Award. In either situation, the Unions agree with the District Court, and for the reasons set forth by the Court, that no proceedings could be completed after the termination of the Award.

The Opinion of the District Court states (JA 172):

"The problem is analogous to that which arises in the event of a repeal of a statute conferring jurisdiction on a court. Under such circumstances the court is not only deprived of authority to entertain future actions of the type covered by the jurisdictional act which has been repealed but also loses power to proceed in those cases covered by the act that were pending on the effective date of repeal. This principle was established in the historic case of *Ex Parte McCardle*, 7 Wallace [74 U.S.] 506. There are numerous other cases enunciating and applying the same principle. Among them are *Railroad Company v. Grant*, 98 U.S. 398; *Hallowell v. Commons*, 239 U.S. 506; *Bruner v. United States*, 343 U.S. 112. In *Railroad Company v. Grant*, Mr. Chief Justice Waite stated that:



'It is well settled that if a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law.'

"Such a frustration is frequently prevented by the inclusion of an express saving or reservation clause in the legislation providing for repeal.

"No such clause is found either in the Act [P.L. 88-108] providing for the creation of the Arbitration Board or in the Award of the Board. It is not unlikely that the Board was of the opinion that it was without power to include such a reservation or saving clause in its Award in view of the peremptory cut-off date contained in the statute.

"The conclusion is inescapable that all proceedings pending before Special Boards of Adjustment came to an end on January 25, 1966 and that no effective award could be made in any of them subsequently to that date."

The discussion of this issue by the District Court leaves little that can be added. It is clear that this determination of the lower Court was correct and should be affirmed.

### **III. THE AWARD OF ARBITRATION BOARD NO. 282 TERMINATED ON JANUARY 24, 1966.**

The question of whether the Award of Arbitration Board No. 282 expired at the end of the day January 24, 1966 or January 25, 1966 relates to only two of the Carriers involved in this action. On January 25, 1966 a special board of adjustment rendered its award with respect to a dispute between the Green Bay & Western Railroad Co., the Kewanee, Green Bay & Western Railroad Co., and the BRT. (JA 63)

The District Court found that where proceedings were initiated under Section III of the Award but were not completed before the expiration of the Award, a special board of adjustment no longer had jurisdiction of the matter, and any award issued after the expiration of the Award would be ineffective. (JA 176) Thus, if the Award



expired at the end of January 24, 1966, as the Unions contend, the award of the special board of adjustment on January 25 was ineffective. The District Court found, however, that the Award expired at the end of January 25, 1966 and the award of January 25 was effective. We believe the District Court's determination was incorrect.

Initially, P.L. 88-108 established the maximum period the Award was to remain in effect. Thus, Section 4 of P.L. 88-108 states:

*"The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."* (Emphasis added.)

Section IV of the Award states (JA 56):

*"This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise."* (Emphasis added.)

The Award was filed November 26, 1963, and pursuant to Section 5 of P.L. 88-108 the Award became effective 60 days thereafter, on January 25, 1964. The fact that the Award became effective on January 25, 1964 was established by the Court below in *In Re Certain Carriers*, 231 F. Supp. 519. In that case, certain Carriers had filed notices pursuant to Section III of the Award on January 25, 1964. The Unions claimed that the notices were premature since judgment on the Award had not been entered. The District Court rejected the Unions' contention, stating (at 520):

*"By its terms, the award became effective on January 25, 1964, that being sixty days following the filing of the award. This Court determined that this was the effective date in the opinion to which reference has been made [Bro. of Loc. Firemen and Enginemen v. Chicago, Burlington & Quincy R.R., 225 F. Supp. 11]."*

Since the effective date of the award was January 25, 1964, and since both P.L. 88-108 and the Award provided that the Award was to remain in effect for two years, it would seem undeniably clear that the Award expired on January 24, 1966, two years after the effective date.

The sole basis for the District Court's holding that the Award expired on January 25, 1966 is that the parties and the Court often referred to the Award as expiring on that date. (JA 151) Initially, the references referred to by the Court include statements by parties in agreements such as that the agreements shall continue in effect "until January 25, 1966, as provided in Section IV, Duration of Arbitration Award No. 282." (JA 66, 67, 68, 69) It is certainly not clear from such language whether the Award was to terminate at the end of January 24 or January 25, 1966. In any event, it would appear to be beyond serious argument that neither the parties, their counsel, nor the Court can extend an Act of Congress simply by statements to that effect, not even for one day. The District Court has held, and correctly we believe, that a special board of adjustment "no longer has jurisdiction" upon the expiration of the Award. Neither the parties nor this Court had the power to extend that jurisdiction, and the Award issued on January 25, 1966 should be declared ineffective.

**IV. WITH THE EXCEPTION OF CERTAIN AGREEMENTS, ALL AGREEMENTS ENTERED INTO PURSUANT TO SECTION III OF THE AWARD OF ARBITRATION BOARD NO. 282 TERMINATED AT JANUARY 25, 1966 OR ON THE TERMINATION OF THE AWARD.**

As we have discussed above, the Award of Arbitration Board No. 282 provided certain procedures to deal with the crew-consist dispute. Under Section III of the Award either party could serve notice of a desire to change the existing crew-consist rules. Upon receipt of such notice the parties were required to hold conferences in an effort

to reach agreement on the proposal, and a large number of agreements were entered into.

Many such agreements provided that they were to remain in effect until changed in accordance with the provisions of the Railway Labor Act. As to these agreements there is no controversy between the parties. A large number of agreements, however, contain other provisions concerning the period during which they were to remain in effect, and the issue has arisen with respect to these agreements as to the effect of the termination of the Award upon the termination of these agreements. With the exception of three agreements the District Court found that the agreements continue in effect until changed in accordance with the provisions of the Railway Labor Act. (JA 177) It is the Unions' contention that the agreements terminated upon the termination of the Award and that the rules in effect prior to the agreements are automatically again in effect.

Many agreements could be categorized and this was done in the Stipulation As To Facts entered into between the parties. (JA 62-112) We shall discuss the various categories of agreements in the same order they appear in the Stipulation.

**A. Agreements providing that they shall continue in effect to the same extent as if they were awards rendered by special boards of adjustment pursuant to Section III of the Award. (JA 65)**

The District Court, consistent with its ruling that the rules established by or pursuant to the Award of Arbitration Board No. 282 survived the expiration of the Award and created a "new plateau", held that these agreements likewise continue in effect until they are changed by agreement or until the procedures set forth in the Railway Labor Act are exhausted. In Section I of our Argument, *supra*, we showed that the District Court erred in finding that the rules established by or pursuant to the Award survived

the termination of the Award, and that the rules in effect prior to the Award are automatically again in effect. If our position is sound with respect to the Award then it follows that the agreements which provided that they were to continue in effect to the same extent as rules established under the Award likewise terminated and the rules in effect prior to the agreement are automatically again in effect.

**B. Agreements providing that they are to remain in effect until January 25, 1966, and thereafter, provided that if the Unions' position is sustained that upon the expiration of the Award the Carriers must revert to the crew-consist rules in effect prior to the Award, then Carriers would revert to those rules. (JA 65-66)**

Here too, consistent with the District Court's holding that the rules established by or pursuant to the Award of Arbitration Board No. 282 continue in effect after the termination of the Award, the lower Court held that the rules established by such agreements continue in effect, after the termination of the agreements. If this Court finds that the District Court's basic holding is erroneous, then the lower Court's holding with respect to these agreements also is erroneous.

**C. Agreements entered into pursuant to Section III of the Award which do not contain any provision concerning the period during which the agreement shall continue in force. (JA 66)**

We submit that such agreements were entered into following the service of notices under Section III of the Award of Arbitration Board 282, and since they contain no other indication of the period which the parties contemplated the agreement should have, that the duration of the agreement is for the period for which the Carriers could propose changes in crew consist under Section III of the Award. Thus a determination of continued effectiveness of the rules established pursuant to these agreements would be dependent upon the conclusion this Court reaches

on the issue of whether the rules established by or pursuant to the Award continue upon the termination of the Award. This issue is discussed in Section I, *supra*.

**D. Agreements set forth in Section F of the Stipulation as to Facts. (JA 66-70)**

In Section F of the Stipulation As To Facts the parties set forth the significant portions of agreements not included in the categories heretofore discussed. With the exception of the agreements set forth in paragraphs (2), (7), and (10) of Section F, the District Court ruled that in each case the agreements (JA 170):

“ . . . have the same effect as awards of the Special Boards of Adjustment created under the Award, and the same consequences attach, namely, that a new status is created which cannot be changed except in the manner already discussed.”

We submit that, contrary to the finding of the District Court, the provisions of these agreements show that the parties intended that at the termination of these agreements the crew-consist rules in effect prior thereto were to be automatically again in effect.

- (1) **Agreements providing that they “shall remain in effect until January 25, 1966, as provided by Section IV, Duration of Arbitration Board No. 282”.**

Agreements containing language either identical or similar to the above were entered into between the BRT and the Carriers referred to in paragraphs (1), (3), (4), and (9) of Section F of the Stipulation As To Facts. (JA 66-69)

It would appear to be beyond serious argument that such agreements terminated on January 25, 1966, in accordance with the precise terms of the agreement. Since the agreements terminated on January 25, 1966, it follows that the rules established by such agreements likewise terminated

on January 25, 1966, else the quoted words, "shall remain in effect until January 25, 1966," have no meaning.

The District Court, however, found that the rules established by these agreements continue in effect after January 25, 1966. The basis for this finding was that since such agreements provided that they were to "remain in effect until January 25, 1966, *as provided by Section IV, Duration of Arbitration Board No. 282*", the italicized part shows the parties' intent that they were to have the same effect as awards of special boards. (JA 170) We believe that the lower Court's construction is erroneous.

It must be remembered that neither P.L. 88-108 nor the Award of Arbitration Board No. 282 set a specific date for the termination of the Award. P.L. 88-108 provided that the period of the Award was not to exceed two years "unless the parties agreed otherwise," and the Award likewise provided that it was to remain in effect for two years "unless the parties agree otherwise." The parties entering into the agreements obviously intended that the expiration of the agreements was to coincide with the expiration of the Award. At the time the agreements were entered into the parties believed that the Award would expire on January 25, 1966 and inserted that date as the period after which the agreements would terminate. The parties could have agreed on any date they could agree on, and the fact that they chose the date that Award 282 was to expire, January 25, 1966, does not change the fact that they agreed that January 25, 1966, was to mark the end of the period the agreement was to remain in effect.

The Unions' explanation of these agreements requires no involved interpretation of the language of the agreements. As a matter of fact our argument simply is that the agreements mean what they say. The District Court's determination, however, requires an interpretation of the agreements which is not supported by any language contained in the agreements. Thus, the District Court would

find that the parties' reference to the duration of the Award somehow indicates that the parties intended that the agreements should be treated as awards of special boards of adjustment, and that since the Court ruled that the rules established by such awards were to continue in effect after the expiration of the award, the parties intended that the same apply to their agreements. There is nothing in these agreements to support the Court's holding.

**(2) Agreements providing that they "shall continue in effect only for the duration of the Award of Arbitration Board No. 282."**

Agreements containing language identical or similar to the above language were entered into between the BRT and the Carriers referred to in paragraphs (5), (11), and (12) of the Stipulation As To Facts. (JA 67-70)

The intent of the parties in entering into agreements containing the above language is undeniable. The parties provided that the agreement was to remain in effect "only" for the duration of the Award. The District Court held that the Award terminated on January 25, 1966 and thus the agreements terminated on January 25, 1966. The Court's construction of these agreements as showing an intent that the parties wanted the agreements to continue as if they were awards of special boards of adjustment is just contrary to the express provisions of the agreements. It should be plain that when the parties say their agreements shall remain in effect "only" until a specified date, they mean it shall not remain in effect after that date.

**(3) The Agreement between the BRT and the Texas Mexican Railway.**

The pertinent language in this agreement, found in Section F paragraph (8) of the Stipulation As To Facts (JA 68), provides that the agreement:

"will continue in effect in accordance with Section IV 'Duration' of Award of Arbitration Board 282."



on January 25, 1966, else the quoted words, "shall remain in effect until January 25, 1966," have no meaning.

The District Court, however, found that the rules established by these agreements continue in effect after January 25, 1966. The basis for this finding was that since such agreements provided that they were to "remain in effect until January 25, 1966, *as provided by Section IV, Duration of Arbitration Board No. 282*", the italicized part shows the parties' intent that they were to have the same effect as awards of special boards. (JA 170) We believe that the lower Court's construction is erroneous.

It must be remembered that neither P.L. 88-108 nor the Award of Arbitration Board No. 282 set a specific date for the termination of the Award. P.L. 88-108 provided that the period of the Award was not to exceed two years "unless the parties agreed otherwise," and the Award likewise provided that it was to remain in effect for two years "unless the parties agree otherwise." The parties entering into the agreements obviously intended that the expiration of the agreements was to coincide with the expiration of the Award. At the time the agreements were entered into the parties believed that the Award would expire on January 25, 1966 and inserted that date as the period after which the agreements would terminate. The parties could have agreed on any date they could agree on, and the fact that they chose the date that Award 282 was to expire, January 25, 1966, does not change the fact that they agreed that January 25, 1966, was to mark the end of the period the agreement was to remain in effect.

The Unions' explanation of these agreements requires no involved interpretation of the language of the agreements. As a matter of fact our argument simply is that the agreements mean what they say. The District Court's determination, however, requires an interpretation of the agreements which is not supported by any language contained in the agreements. Thus, the District Court would



find that the parties' reference to the duration of the Award somehow indicates that the parties intended that the agreements should be treated as awards of special boards of adjustment, and that since the Court ruled that the rules established by such awards were to continue in effect after the expiration of the award, the parties intended that the same apply to their agreements. There is nothing in these agreements to support the Court's holding.

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The intent of the parties in entering into agreements containing the above language is undeniable. The parties provided that the agreement was to remain in effect "only" for the duration of the Award. The District Court held that the Award terminated on January 25, 1966 and thus the agreements terminated on January 25, 1966. The Court's construction of these agreements as showing an intent that the parties wanted the agreements to continue as if they were awards of special boards of adjustment is just contrary to the express provisions of the agreements. It should be plain that when the parties say their agreements shall remain in effect "only" until a specified date, they mean it shall not remain in effect after that date.

**(3) The Agreement between the BRT and the Texas Mexican Railway.**

The pertinent language in this agreement, found in Section F paragraph (8) of the Stipulation As To Facts (JA 68), provides that the agreement:

"will continue in effect in accordance with Section IV 'Duration' of Award of Arbitration Board 282."

The only difference between the language in this agreement and the language in the agreements discussed above in (1) is that in those agreements the parties stated that the agreements were to remain in effect "until January 25, 1966, as provided by Section IV" and here the parties omitted the date. As we showed in our discussion of those agreements, the parties obviously referred to Section IV of the Award since that section provided that the Award was to terminate after two years unless the parties agreed otherwise. Certainly there is nothing in the agreement which, in any manner, supports the lower Court's holding that the parties intended to treat the agreement as an award of a special board for any purpose other than determining when the agreement terminated. The District Court held that the Award terminated on January 25, 1966 and the agreement likewise terminated at the same time.

**(4) The agreement between the BRT and the  
Kansas City Southern Railway Company and  
the Louisiana & Arkansas Railway Company.**

The pertinent provisions of this agreement are set forth in Section F paragraph (6) of the Stipulation As To Facts. (JA 67) Section 16 of the agreement provided:

"16. This agreement does not affect schedules rules, agreements (and practices with respect to consist of crews), in effect on the day preceding the effective date of this agreement, except to the extent modified by the Agreement and by interpretations of Arbitration Board No. 282 for the period this agreement remains in effect, as provided in Section 17 hereof."

The parties then, in paragraph 17, stated "the period this agreement remains in effect" to be as follows:

"... This agreement shall be effective October 1, 1964 and shall remain in effect until January 25, 1966, unless the parties agree otherwise, in accordance with Article IV, Duration of Award of Arbitration Board No. 282."

The intent of the parties is thus beyond reasonable dispute. Repeating the salient words of those two paragraphs, we have:

“This agreement does not affect schedule rules . . . in effect on the day preceding the effective date of this agreement except . . . for the period this agreement remains in effect. . . . This agreement . . . shall remain in effect until January 25, 1966. . . .”

If this does not mean that the rules in effect on the day preceding the agreement are again the rules in effect on January 25, 1966, it must be because it was impossible for the parties validly to contract that the rules in effect on the day preceding the agreement would again be the governing rules commencing January 25, 1966. We know of no foundation for such impossibility.

**(5) The agreement between the BRT and the Wichita Terminal Association.**

The pertinent provisions of this agreement are set forth in Section F paragraph (13) of the Stipulation As to Facts. (JA 69)

Paragraph 10 of the agreement provides that the agreement shall remain in effect “until January 25, 1966, as provided by Section IV, Duration of Arbitration Award No. 282.” To this extent, the agreement is the same as the agreements discussed above in D(1), and as we showed there, the agreement clearly provides that it was to terminate on January 25, 1966, the date the Award was set to expire.

This particular agreement, however, goes even farther. The preamble to the agreement provides that “Article VIII—Consist of Crew, of the current Agreement between the parties hereto is hereby modified during the term of this agreement” and paragraph 8 provides that the prior rules are not modified except as specifically provided in the agreement. Paragraph 10, then provides that the

changes in crew-consist rules pursuant to the agreement "shall remain in effect until January 25, 1966." In this situation, there is no reason to hold that this agreement does not mean what it says, to wit, that upon the termination of the agreement on January 25, 1966, the crew-consist rules as embodied in "Article VIII—Consist of Crew, of the Current Agreement" and which were "modified during the term of this Agreement" again become operative.

**V. IF A CREW-CONSIST AGREEMENT WAS ENTERED INTO BETWEEN THE BRT AND THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, THE AGREEMENT TERMINATED ON JANUARY 25, 1966.**

Exhibits B through H attached to the Stipulation As To Facts (JA 80-90) are copies of a series of letters which passed between the Carrier and the BRT.

The letters show that on October 9, 1964, the Carrier sent a letter to the BRT proposing a change in crew consist pursuant to Section III, Part A(3) of the Award of Arbitration Board No. 282. (JA 80) On October 27, 1964, the BRT replied to the Carrier's letter stating that the BRT understood that the proposed change would "only be in effect for the duration of Award 282 which expires January 25, 1966" and that under such circumstances the change was agreeable and the BRT accepted it. The BRT letter also referred to the Carrier's proposal, on October 26, 1964, to have the parties agree to a "permanent rule" which could be changed thereafter only in accordance with the procedures of the Railway Labor Act but concerning which the parties had not had an opportunity to confer. (JA 81-82)

On October 28, the Carrier responded to the BRT's letter and stated that the Carrier was "not agreeable that the duration of such an agreement . . . be limited to run only until January 24, 1966, and automatically expire at that time." (JA 83-85)

The remaining correspondence consists of no more than restatements of the opposing positions; the Carrier taking the position that an agreement had been consummated pursuant to which the "duration of the agreement will be the same as any other agreement . . . which does not include a specific termination date," (JA 88) and the BRT taking the position that a "temporary agreement" had been consummated to continue until January 25, 1966 at which time the rules in effect prior to the agreement were automatically again to be in effect. (JA 86)

It is clear from the foregoing that the BRT refused to enter into an agreement which would establish new rules to continue in effect after January 25, 1966 and did not enter into such agreement. It is doubtful that there was any agreement at all. Each party stated that it would not agree to the other's understanding of the termination date of the agreement. If there was no agreement, then the only rules in effect were those that existed prior to the exchange of correspondence and which would continue in effect until agreement should be reached or the procedures of the Railway Labor Act should be exhausted. In any event, the finding of the District Court that an agreement had been reached and that the agreement shows an intent by the BRT that the agreement was to have the same effect as if it were an award of a special board clearly is contrary to the facts and must be reversed

#### **VI. THE AGREEMENT BETWEEN THE BRT AND THE SOUTHERN RAILWAY SYSTEM TERMINATED ON JANUARY 25, 1966**

The Carriers involved with respect to this issue comprise almost all of a railroad system known as "The Southern Railway System" (herein referred to as the "Southern"). The facts are set forth in Section N of the Stipulation As To Facts. (JA 76)

Southern was not a party to Award 282 or subject to P.L. 88-108. On July 26, 1965, following the service of notices pursuant to Section 6 of the Railway Labor Act, an

agreement was entered between the BRT and Southern concerning the consist of crews. (JA 98) Paragraph V of that agreement provides (JA 103):

“Crew consist rules and practices are modified by this agreement only to the extent necessary to permit the crew consist reductions specifically provided for herein.

“This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III—Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282.”

The District Court recognized that Southern was not subject to P.L. 88-108 nor the Award of Arbitration Board No. 282. (JA 179) The Court ruled, however, that the crew-consist rules established by the agreement created a “new status” which is to be maintained after January 25, 1966. (JA 179) The rationale for such holding is set forth in the following terse statement of the lower Court (JA 171):

“The conclusion necessarily follows that the same consequences attach to this agreement as do to the other agreements.”

The Court’s holding that the Southern agreement created a new status which is to be maintained after January 25, 1966 is erroneous for two reasons.

Initially, even if the Court below was correct in classifying the Southern agreement with all other agreements, the Court’s conclusion that the agreement created a “new status” was erroneous, since the Court’s determination with respect to the other agreements was not correct. As we have shown in Section IV, *supra*, those agreements all terminated upon the expiration of the Award of Arbitra-

tion Board No. 282 and the rules in effect prior to the agreements were automatically again in effect.

The particular language used in the Southern agreement most nearly resembles that discussed in Part IV, D(1), *supra*, and as we there showed, the language of the agreement states in no uncertain terms that it was to expire on January 25, 1966, which the parties believed would be the expiration date of the Award. It stretches the agreement beyond permissible bounds to construe such language, as did the District Court, to mean that the parties *intended* that rules established by the agreement were to continue in effect after the *termination* of the agreement, and after the termination of the Award.

Furthermore, the Southern agreement differs from all other agreements previously discussed in a most significant respect. That is, Southern was not a party to P.L. 88-108 nor the Award of Arbitration Board No. 282. Unlike all other agreements entered into between the Carriers and the Unions, discussed above, which came about as a result of notices served under Section III of the Award of Arbitration Board No. 282, the agreement between the BRT and Southern was entered into pursuant to a notice served under Section 6 of the Railway Labor Act. Thus, whatever relevance might be found to exist in the fact that an agreement was made pursuant to a notice served under the Award would not be applicable to this situation.

The agreement provided that it should remain in effect until January 25, 1966 to the same extent as if it were an award of a special board of adjustment. The reference to the award of a special board of adjustment dealt solely with duration, not with the consequences on such awards of the expiration of P.L. 88-108, which did not apply to Southern. The Court below found that the award of a special board terminated on January 25, 1966. The agreement is clear and unambiguous and the District Court erred in construing the agreement in a way contrary to the express terms of the agreement.



**VII. A CARRIER IS NOT SUBJECT TO P.L. 88-108 AND THE AWARD OF ARBITRATION BOARD NO. 282 UNLESS IT SERVED THE SECTION 6 NOTICE OF NOVEMBER 2, 1959 OR WAS SERVED WITH A UNION SECTION 6 NOTICE OF OCTOBER 7, 1960; THE NOTICES CONTINUED IN EFFECT THROUGHOUT THE PERIOD PRIOR TO THE ENACTMENT OF P.L. 88-108; ALL THE PROCEDURES OF THE RAILWAY LABOR ACT HAD BEEN EXHAUSTED WITH RESPECT TO SAID NOTICES; AND A STRIKE HAD BEEN THREATENED ON THE CARRIER JUST PRIOR TO THE ENACTMENT OF P.L. 88-108.**

The District Court found that a Carrier and a Union were subject to P.L. 88-108 and the Award of Arbitration Board No. 282 if the Carrier served a Union with the Section 6 notice of November 2, 1959 or the Union served a Carrier with the Section 6 notice of September 7, 1960, and such notices remained in effect throughout the period prior to the enactment of P.L. 88-108. The Court concluded that all Carriers with the exception of those Carriers comprising the railway system known as the "Southern Railway System" were subject to P.L. 88-108 and the Award. Included among the Carriers found to be subject to the Award were the Tennessee, Alabama & Georgia Railway Company (herein referred to as the "TA&G") and the Terminal Railway, Alabama State Docks (herein referred to as the "Terminal"). The facts relating to Southern are set forth in Section N of the Stipulation as to Facts, and the facts with respect to TA&G and Terminal are set forth in the Stipulation in Sections O and P respectively. (JA 77-78) In both the TA&G and Terminal cases, although notices had been served under Section 6 of the Railway Labor Act, the procedures of the Railway Labor Act had not been exhausted and there is no evidence that a strike had been threatened on either Carrier at the time P.L. 88-108 was enacted.

The District Court's determination that these carriers were subject to P.L. 88-108 is contrary to the express terms of P.L. 88-108 and contrary to a decision rendered by the lower Court in *Division 700, Brotherhood of Loco-*



*motive Engineers, et al. v. National Railway Labor Arbitration Board No. 282, et al.*, 224 F. Supp. 366 (D.D.C. 1963).

The significance of whether the TA&G is subject to P.L. 88-108 is two fold. First, there is an agreement between the BRT and TA&G which by its terms is to remain in effect as if it were an award of a special board of adjustment. (JA 106) If the TA&G was not subject to P.L. 88-108 and therefore not subject to the Award of Arbitration Board No. 282 then such agreement terminated on the date the Award terminated just as the agreement between the BRT and Southern.

In addition, the BRT served Section 6 notices under the Railway Labor Act on both the TA&G and Terminal during the effective period of the Award (JA 78) and the issue has arisen whether such notices were effective under the Railway Labor Act to require bargaining during the period of the Award. The District Court held that they were not effective until the expiration of the Award. (JA 179-180) Such Section 6 notices with respect to these carriers were unquestionably valid since the TA&G and the Terminal were not subject to P. L. 88-108 and the only basis for holding such notices ineffective was that P. L. 88-108 prohibits them. This subject is discussed in greater detail in Section VIII of this brief, *infra*.

The preamble to P.L. 88-108 sets forth the reasons that prompted Congress to pass the legislation. The first preamble refers to the existence of a labor dispute between five unions and the Carriers' Conference Committees, and threat of a strike. There is no evidence that a strike had been threatened on these two Carriers.

The second preamble recites that all procedures for resolving the dispute under the Railway Labor Act had been exhausted. This statement did not apply with respect to the TA&G and the Terminal. In the case of each of these

Carriers, the parties agreed that they would suspend further handling of their Section 6 notices until the matter was determined after national handling to which they were not party. They recessed their negotiations on the property and made no attempt to invoke the mediatory services of the National Mediation Board. The third preamble recites that emergency steps were necessary for security and continuity of transportation. No emergency steps were necessary with respect to these two Carriers since a strike was not threatened.

The fourth and fifth preambles recited that on August 2 and August 16, 1963 the parties had tentatively agreed to the settlement of some issues and had tentatively agreed that certain issues be resolved by binding arbitration. This did not apply to the TA&G or the Terminal as neither had been a party to such negotiations.

Thus, not one of the reasons given by Congress for enacting P.L. 88-108 is applicable to the dispute with respect to either the TA&G or the Terminal even though, technically, Section 6 notices had been served and had remained outstanding during the period prior to the enactment of P.L. 88-108. It is clear that the service of Section 6 notices was intended to be only one of the factors in determining whether a Carrier is subject to P.L. 88-108, and that of equal if not greater significance is whether the parties had exhausted the procedures of the Railway Labor Act with respect to such notices and whether the parties were free to use self help prior to the enactment of P.L. 88-108 and the Unions had cause to do so.

The District Court's holding to the contrary is even more surprising since it is in obvious conflict with a prior determination of the Court in the *Division 700* case, *supra*. In that case, the carrier withdrew its November 2, 1959 notice on April 28, 1960 and re-served it on June 13, 1963. The

carrier's notice was not processed during the intervening years, the procedures of the Railway Labor Act had not been exhausted, and the carrier had not been a party to the protracted national proceedings that culminated in the enactment of P.L. 88-108. The Court held that the carrier was not subject to P.L. 88-108 nor the Award.

The reasoning of that case is directly applicable here. Thus, in that case the District Court began by summarizing the events which led to the enactment of P.L. 88-108, pointing out its uniqueness, the events that precipitated it, including the threat of a strike, the protracted negotiations, and the exhaustion of all procedures under the Railway Labor Act. The Court concluded (224 F. Supp. at 368):

"The Court construes the Act as referring to and including only those notices of November 2, 1959, that continued in effect, because those that did not continue in effect did not bring about the mediation efforts of the Railway Labor Act and because there was no threat of a strike . . . ."

It is clear from the Court's opinion that whether a notice would be considered to have "continued in effect" would not depend upon whether or not it was withdrawn but whether the activity referred to resulted from the notice. Thus, as the notice in that case had been withdrawn it was in no way responsible for all that took place thereafter which led to the enactment of P.L. 88-108, and the carrier's dispute was held not to be encompassed within that enactment. Similarly here, since the two Carriers' notices were in no way concerned with what led to the enactment of P.L. 88-108, the result should follow that the dispute as to these Carriers likewise is not encompassed within that enactment.

**VIII. SECTION 6 NOTICES SERVED DURING THE EFFECTIVE PERIOD OF THE AWARD WERE EFFECTIVE TO REQUIRE NEGOTIATIONS DURING THE EFFECTIVE PERIOD OF THE AWARD.**

During the effective period of the Award of Arbitration Board No. 282, the BRT served notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156) on many of the Carriers requesting that certain changes be made with respect to crew-consist rules to be effective following the expiration of the effective period of the Award (JA 78, 116-119). In most instances, the Carrier in turn served a Section 6 notice on the BRT setting forth its proposals with respect to a change in crew-consist rules. (JA 79) In other instances, Carriers served a Section 6 notice on the BRT although the BRT had not served such Carriers with a notice. (JA 79) Some of the Carriers involved are subject to P.L. 88-108 and the Award, while others are not.

The District Court held that all such notices were not effective under the Railway Labor Act until after the expiration of the Award. Thus, the District Court found that the parties could not be required even to negotiate concerning such changes to be in effect *after* the termination of the Award until *after* the expiration of the Award. Such holding is contrary to the fundamental purposes of the Railway Labor Act, and contrary to the provisions of P.L. 88-108 as shown by the express terms of that Act and the legislative history of the Act.

**A. Carriers subject to P.L. 88-108.**

Certainly, the District Court's conclusion that the Section 6 notices did not require bargaining is not compatible with the basic provisions of the Railway Labor Act. Section 2 of the Act (45 U.S.C. § 151(a)), entitled "General Purposes" recites that one of the Act's purposes is:

"(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions . . . ."

Such purpose is subverted if one party can refuse even to discuss a proposed change in an agreement until after the date on which the change is to take effect has passed. Yet this is precisely what the District Court has held.

Section 2, First of the Act (45 U.S.C. § 152, First) provides that it shall be the duty of all carriers and their employees to exert every reasonable effort to make and maintain agreements. Yet the District Court holds that in the present case a party could refuse even to discuss the proposed changes in an agreement to be effective on a certain date until after that date has passed.

The procedure under the Railway Labor Act to require a carrier to negotiate concerning changes in rules to be effective at the expiration of the Award is by the service of a notice under Section 6 of the Railway Labor Act. Such notices were served, yet the District Court found that the parties were not required to negotiate concerning the proposed changes until after the date on which such changes were proposed to take effect.

Thus, the District Court would, by judicial interpolation, alter the language of Section 4 of P.L. 88-108 from "not to exceed two years" to "at least two years" since obviously if no Section 6 notice requesting change could be made or require negotiations until after the expiration of the Award no change would be made until long after the two-year period.<sup>2</sup>

Moreover, the legislative history of P.L. 88-108 can leave no doubt that the intent was that the parties were to negotiate during the two-year period of the Award in the hope that a more lasting solution to the dispute could be found.

In Section I of this brief we showed that beginning with the message of the President of the United States request-

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<sup>2</sup> "... the procedures of the Act are purposefully long and drawn out. . . ." *Brotherhood of Railway Clerks et al. v. Florida East Coast Ry.*, — U.S. —, decided May 23, 1966, 34 Law Week 4415, 4416.

ing legislation concerning the crisis over the crew-consist dispute, and continuing thereafter at the hearings of the committees of Congress considering the legislation, the committee report, and debates in Congress, the intent was that the legislation provide only an interim solution to the dispute, and that a final resolution must be accomplished through collective bargaining between the parties during the two-year period. Each of the references cited above, in unmistakable terms shows that the purpose of the legislation was to afford the parties additional time during which to negotiate. In addition to the legislative history discussed in that Section we add the following.

President Kennedy in his message to Congress explaining his proposed legislation stated (H. Doc. 142, 88th Cong., 1st Sess., 109 Cong. Rec. 12397):

"I stress the fact that, unlike compulsory arbitration, these procedures would provide only interim changes and only for those situations and for such length of time as the parties are unable to agree by collective bargaining . . . . *Experience with both the interim rules and these temporary procedures should enable the parties to consider in 2 years, under considerably less pressure, whatever more comprehensive final solution is needed, if any.*" (Emphasis added.)

Secretary of Labor Wirtz, at the House Committee hearings on the proposed legislation, testified (House Committee on Interstate and Foreign Commerce on H. J. Res. No. 565, 88th Cong., 1st Sess., at 59-60):

"Mr. Rogers of Texas: At the end of the two-year period, Mr. Secretary, if we assume that these two issues, crew consist and the firemen matter, have not been settled, do you anticipate a request for an extension of the authority proposed in this legislation?

"Secretary Wirtz. If nothing has happened at the end of that period. Incidentally, this would be the period after which the rule had been operative for two years—the interim rule . . . . May I take one moment to say that this would be the first industry, this would

be the first pair of parties in the history of collective bargaining in this country in which it had been impossible to reach that agreement . . . . I think these parties will *in this period* for very strong self-interest reasons work it out." (Emphasis added.)

There is also the testimony of James E. Wolfe, Chairman of the National Railway Labor Conference, and later one of the Carriers' representatives on Arbitration Board No. 282, at the Senate Committee hearings (Senate Committee on Commerce, S. J. Res. No. 102, 88th Cong., 1st Sess., at 375):

*"As I understand the resolution, it imposes a duty upon the parties to attempt to settle their differences. But at the same time it is designed to protect the public interest as a result of the establishment of these interim rules for a period of two years or less, while the parties undertake, through collective bargaining, to bring about a more permanent solution to their problems."* (Emphasis added.)

In addition, there is also the statement of Senator Morse during debate in the Senate (109 Cong. Rec. 15891):

*"It is in the light of these interim rules that Senate Joint Resolution 102 would encourage and stimulate the parties to continue to bargain in order to develop final resolutions of these and of all other remaining issues."* (Emphasis added.)

It is beyond understanding that, in the light of the above, the District Court without reference to P.L. 88-108, its legislative history, or for that matter, without any reference at all, could find that the parties could not be required even to negotiate during the two-year period of the Award, and that it was improper for one of the parties to ask the other to negotiate. If the District Court is correct, then a great many people were uniformly inarticulate. The lower Court's determination leads to the



conclusion that the draftsmen of the language of P.L. 88-108, the numerous people who testified at the hearings before the Senate and House committees on the purpose of the legislation, and the members of Congress who described the bill on the floors of Congress, all meant to say that neither side to the dispute could even initiate proceedings to change the rules until the expiration of two years after the effective date of the Award. As discussed above, it would contradict the philosophy of all current labor legislation to suppose that Congress meant to prohibit either side from proposing discussions in collective bargaining on what the rules should be after the expiration of the Award. Surely, if such a radical departure was the intent of Congress, such intent would have been made clear. We can find nothing, however remote, to support a conclusion that such was the intent of Congress,—except the decision below.

The Carriers have argued that since P.L. 88-108 provided that changes in crew-consist rules could be initiated under the Award only by service of a notice under Section III of the Award, a Section 6 notice under the Railway Labor Act served during the Award would be improper. This argument is specious. The Section III notice under P.L. 88-108 could change crew-consist rules only for the effective period of the Award. A Section III notice designed to change the rules to be effective upon the expiration of the Award would have been invalid. The only method to initiate a change in crew-consist rules to be effective upon the expiration of the Award was through a Section 6 notice. Such fact is most patent with respect to those Carriers that entered into agreements under Section III of the Award which were to remain in effect until changed in accordance with the procedures of the Railway Labor Act. (JA 65) On these Carriers, any changes in crew-consist rules could come about only pursuant to a Section 6 notice; a Section III notice at any time would have been a repudiation of the agreement. Yet,



even in such cases, the lower Court held that the service of Section 6 notices during the period of the Award was ineffective.

**B. Carriers not subject to P.L. 88-108.**

The argument in part A above concerned the effectiveness, during the period of the Award of Arbitration Board No. 282, of Section 6 notices where the Carriers involved were subject to P.L. 88-108 and the Award. As discussed above, however, some of the Carriers involved were not subject to P.L. 88-108 nor the Award. The District Court made no distinction between the two categories holding that, even as to Carriers not subject to P.L. 88-108 and the Award, Section 6 notices served during the Award were invalid. (JA 179-180) Among the Carriers comprising this latter category are those listed in Section N of the Statement As To Facts which are all part of the Southern Railway System.

The lower Court held that Section 6 notices served by the BRT on Southern during the period of the Award were ineffective because Southern had entered into an agreement with the BRT during the period of the Award which provided (JA 103):

"This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III—Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282."

The District Court construed the provision to mean that the parties intended that, although Southern was not subject to P.L. 88-108 and the Award, the agreement was to lose all identity as an agreement and was to be treated for all purposes as if it were an award of a special board of adjustment. Thus, the District Court determined that

the rules established by the agreement continued in effect upon the termination of the agreement consistent with the Court's determination that the rules created pursuant to awards of special boards of adjustment continued in effect after the termination of the Award. (In part VI of this Brief, *supra*, we dealt with this point.) Consistent with that determination, the Court held that the parties intended that no Section 6 notice would be effective during the period of the agreement. It is clear, however, that even if the District Court was correct in holding that the rules established by the Southern agreement continued in effect after the termination of the agreement, there is no merit to the additional finding that Section 6 notices served during the term of the agreement would be invalid.

In part A of this argument, we showed that the Court's conclusion that Section 6 notices served during the period of the Award were not effective until after the Award, was contrary to the provisions of the Railway Labor Act, and P.L. 88-108. Although we could find nothing in P.L. 88-108 nor the legislative history of that enactment to support the Court's conclusion, it is clear that such determination must have been predicated on the Court's interpretation of P.L. 88-108. Since Southern was not covered by P.L. 88-108, it was not subject to any such limitation. No provision of the agreement prohibits the serving of a Section 6 notice at any time. Whatever interpretation the District Court gave to the provision of the agreement quoted above, it is clear that such provision related solely to the *duration* of the agreement. The provision refers to the period the agreement was to "continue in effect." There is not the slightest ambiguity in the language of the Southern agreement which would permit an interpretation that the parties intended to adopt the limitations of P.L. 88-108 as limitations on their agreement. Yet such ambiguity must be found to support the lower Court's determination that the parties intended that no Section 6 notices could be served.

The argument here has been confined to Southern because it is only this group of the Carriers that the District Court found not to be subject to P.L. 88-108 and the Award. In part VII of this Brief, *supra*, we showed that the District Court's basis for determining whether a Carrier was subject to P.L. 88-108 and the Award was incorrect and that other Carriers, including the Tennessee, Alabama & Georgia Railway Company, and the Terminal Railway, Alabama State Docks, were not subject to P.L. 88-108 and the Award. These Carriers were served with Section 6 notices during the Award and the Court ruled such notices to be ineffective during the Award.

Thus, this argument is directed at any of the Carriers found not to be subject to P.L. 88-108 and the Award. Such argument is particularly compelling with respect to the Terminal Railway, Alabama State Docks, which not only was not subject to P.L. 88-108 and the Award but the agreement entered into provided that the agreement was to continue in effect until changed in accordance with the procedures set forth in the Railway Labor Act. In such cases, there can be no question that Section 6 notices are effective even though served during the period of the Award.

**IX. THE NORRIS-LA GUARDIA ACT (29 U.S.C. §§ 101-115) IS APPLICABLE TO A REQUEST BY THE CARRIERS FOR INJUNCTIVE RELIEF AGAINST A STRIKE BY THE UNIONS UNDER THE CIRCUMSTANCES OF THIS CASE.**

The District Court held that the rules established by or pursuant to the Award of Arbitration Board No. 282 continued in effect after the expiration of the Award and concluded that a strike by the Unions concerning the rules to be in effect at the expiration of the Award, without exhausting the procedures of the Railway Labor Act, would be unlawful and the Court would have jurisdiction to enjoin such a strike and that none of the provisions of the Norris-LaGuardia Act would apply to such strike. (JA 180)

In their argument before the District Court, the Unions urged that even if the Court were correct in its determination that it would have *jurisdiction* to enjoin a strike, since the Carriers had refused to negotiate concerning the dispute when requested to do so (JA 113), even though the Carriers may not have been legally obligated to negotiate, the Court should refuse to grant injunctive relief because of the Carriers' failure to meet the requirements of Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108).

As discussed hereinabove one of the issues in this case involves the effectiveness, during the period of the Award, of Section 6 notices served by the BRT. In most cases, the Carriers advised the BRT that such notices were premature and the Carriers refused to bargain concerning the dispute, and the District Court held that the Carriers' position was correct. We have taken issue with that holding. However, even if the holding of the Court below is correct, the Court nevertheless erred in refusing to find that the Carriers would not be entitled to injunctive relief because of their failure to meet the requirements of Section 8 of the Norris-La Guardia Act.

Although the District Court found that P.L. 88-108 placed no obligation upon the Carriers to bargain concerning the Section 6 notices until the expiration of the Award of Arbitration Board No. 282, we do not understand its holding to be that it would have been unlawful for them to do so. Such a determination would require a finding that P.L. 88-108 intended to *prevent* collective bargaining, and obviously would be erroneous. Thus, we have a situation in which the Carriers were requested to enter into negotiations concerning the rules to be in effect at the expiration of the Award and the Carriers refused to negotiate. Under such circumstances they are not entitled to injunctive relief to enjoin a strike over disputes arising with respect to such rules.

Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) provides:

*"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."* (Emphasis added.)

Thus, even where jurisdiction exists, Section 8 prescribes a rule of law denying injunctive relief to complainants who fail to meet specified requirements.

The Carriers fail to meet at least two of those conditions of entitlement to injunctive relief. They have refused to bargain in good faith and they have not made any effort to utilize available governmental machinery of mediation, both of which are made prerequisite by Section 8 to a claim for an injunction.

That the failure to try to settle the dispute by negotiation, or mediation, even when such steps are not obligatory, deprives a plaintiff otherwise entitled thereto of the right to injunctive relief, is made plain in *Brotherhood of R.R. Trainmen v. Toledo, Peoria & Western R.R.*, 321 U.S. 50 (1944).<sup>3</sup> In that case the carrier had met every test of entitlement to an injunction under Section 7 of the Norris-La Guardia Act (29 U.S.C. § 107), but a unanimous Supreme Court held that failure to arbitrate, even though there was no obligation to arbitrate and the carrier was entirely within its rights in not agreeing to arbitrate, disentitled the carrier to injunctive relief against unlawful conduct by the

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<sup>3</sup> This holding was reaffirmed by the Supreme Court in *Brotherhood of Railway Clerks, et al. v. Florida East Coast Ry.*, — U.S. —, decided May 23, 1966, 34 L.W. 4415 at footnote 8.

union because arbitration was "available." Referring to the Norris-LaGuardia Act, the Court said (at 58-59):

"It sought to make injunction a last line of defense, available not only after other legally required methods, but after all reasonable methods as well, have been tried and found wanting. This purpose runs throughout the Act's provisions. It is dominant and explicit in § 8."

The Court said further (at 61):

"Obviously, if the view of the Court of Appeals is right, the condition requiring 'every reasonable effort to settle' the dispute becomes a dead letter in railway labor disputes, since no more would be required by its terms in that application than is called for by the first condition which demands compliance with legal obligations."

And the Court held (at 63):

"Respondent's failure or refusal to arbitrate has not violated any obligation imposed upon it, whether by the Railway Labor Act or by the Norris-LaGuardia Act. . . . Respondent is free to arbitrate or not, as it chooses. But if it refuses, it loses the legal right to have an injunction issued by a federal court or, to put the matter more accurately, it fails to perfect the right to such relief. This is not compulsory arbitration. It is compulsory choice between the right to decline arbitration and the right to have the aid of equity in a federal court."

In the present case not only have the Carriers not made "every reasonable effort" to settle the underlying dispute, they have refused even to negotiate when requested. If Section 8 of the Norris-LaGuardia Act prevented the issuance of injunctive relief in the *T. P. & W.* case, then, *a fortiori*, it prevents such relief in this case.

The District Court's only basis for finding that Section 8 of the Norris-LaGuardia Act would be inapplicable in

this case appears to be that since all other provisions of the Norris-LaGuardia Act are inapplicable, it could find:

"no basis for holding that some of the provisions of the Norris-LaGuardia Act may be applicable while others may not be." (JA 166-167)

As we showed above, however, Section 8 of the Norris-LaGuardia Act is distinguishable from the other provisions of that Act. The other provisions all involve the *jurisdiction* of federal courts to grant injunctive relief. Section 8, however, presupposes that jurisdiction does exist but nevertheless establishes a rule of law that a federal court shall not grant injunctive relief if a party has not met the requirements of the Section.

The cases cited by the Court hold that the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act. *Virginian Ry. v. System Federation No. 40*, 300 U.S. 515, 562-563 (1937); *Bro. of R.R. Trainmen v. Chicago R. & I. R.R.*, 353 U.S. 30 (1957). Assuming that the Norris-LaGuardia Act may not properly be invoked to frustrate the mandates of the Railway Labor Act, and assuming that that principle has application here, it is not perceived how a holding that the Carriers were required to negotiate the issues involved in the dispute before they would be entitled to an injunction, would frustrate any mandate of the Railway Labor Act or any other mandate or would frustrate anything other than the intention of Congress in enacting the Norris-LaGuardia Act.

### CONCLUSION

For the foregoing reasons and upon the foregoing authority it is respectfully submitted that the judgment of the District Court should be sustained with respect to its holdings that the procedures established by the Award of Arbitration Board No. 282 for changing crew consist rules terminated upon the expiration of the Award and that pro-

ceedings, initiated under Section III of the Award but not completed before the termination of the Award, could not be completed thereafter, and that the judgment of the District Court be reversed in all other respects.

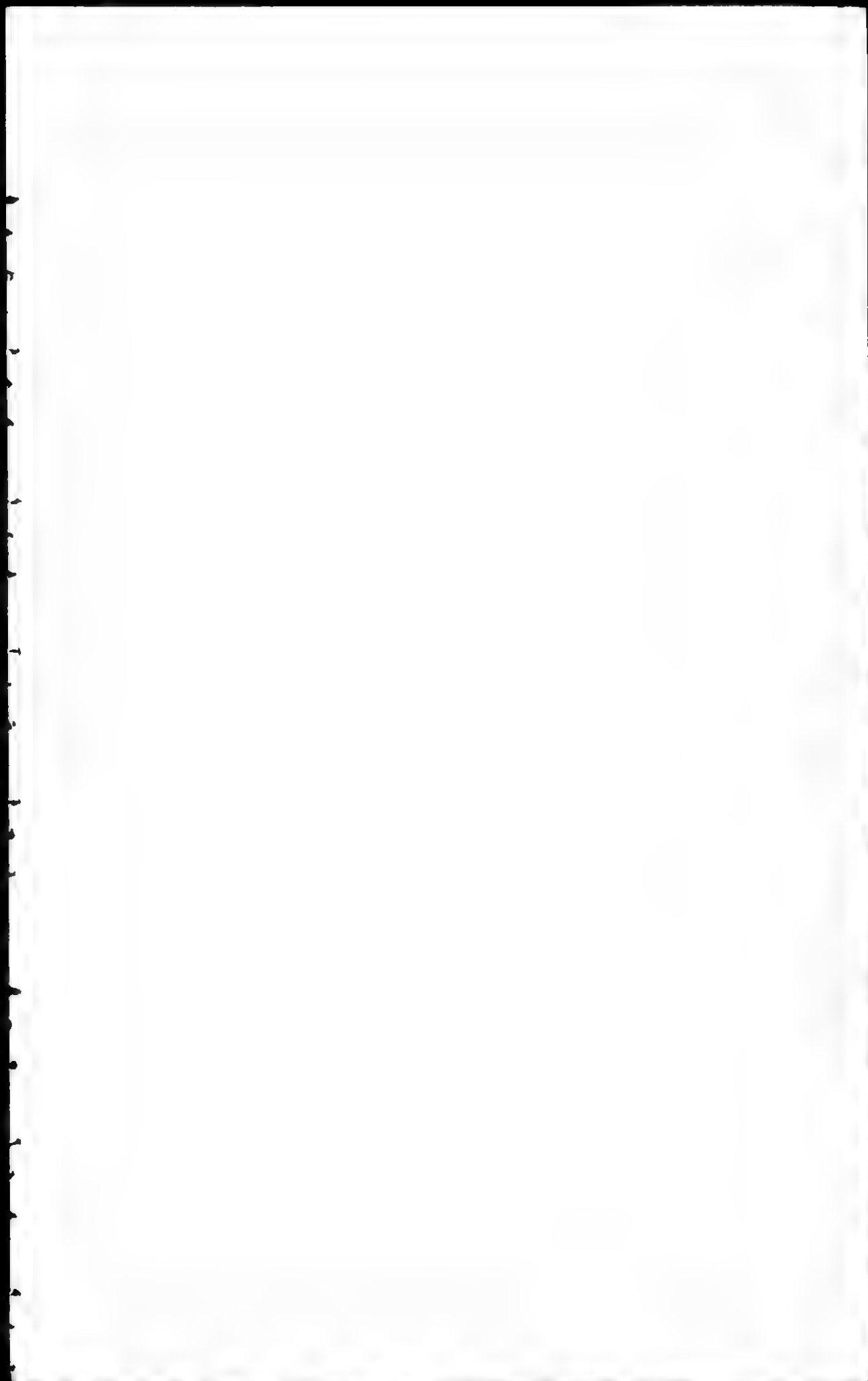
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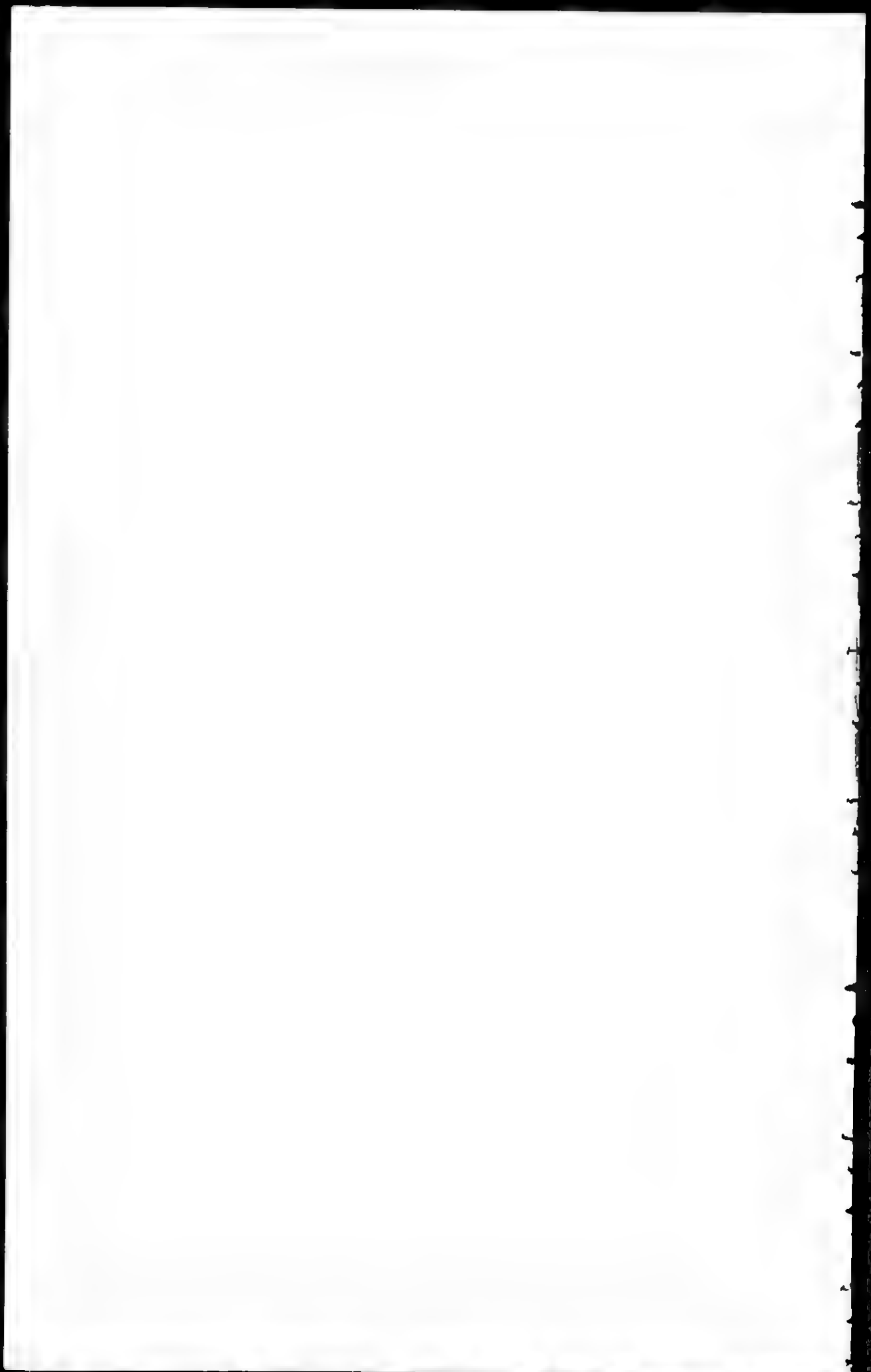
SCHOENE AND KRAMER  
1625 K Street, N. W.  
Washington, D. C. 20006

June 1966.





## APPENDIX



## APPENDIX

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**Public Law 88-108, 77 Stat. 132**

Whereas the labor dispute between the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through collective bargaining; and

Whereas, on August 2, 1963, the Secretary of Labor submitted to the carrier and organization representatives certain suggestions as a basis of negotiation for disposition of the fireman (helper) and crew consist issues in the dispute and thereupon through such negotiations tentative agreement was reached with respect to portions of such suggestions; and

Whereas, on August 16, 1963, the carrier parties to the dispute accepted and the organization parties to the dis-

puted accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but the said parties have been unable to agree upon the terms and procedures of an arbitration agreement: Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

Sec. 2. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within

ten days after the date of enactment of this joint resolution. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of \$100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

Sec. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

Sec. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

Sec. 5. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

Sec. 6. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

Sec. 7. (a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award

upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforceable through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

Sec. 8. This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

Sec. 9. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby.

Approved August 28, 1963.

**Section 6. Railway Labor Act, 44 Stat. 582, as amended.  
45 U.S.C. § 156**

Section 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working



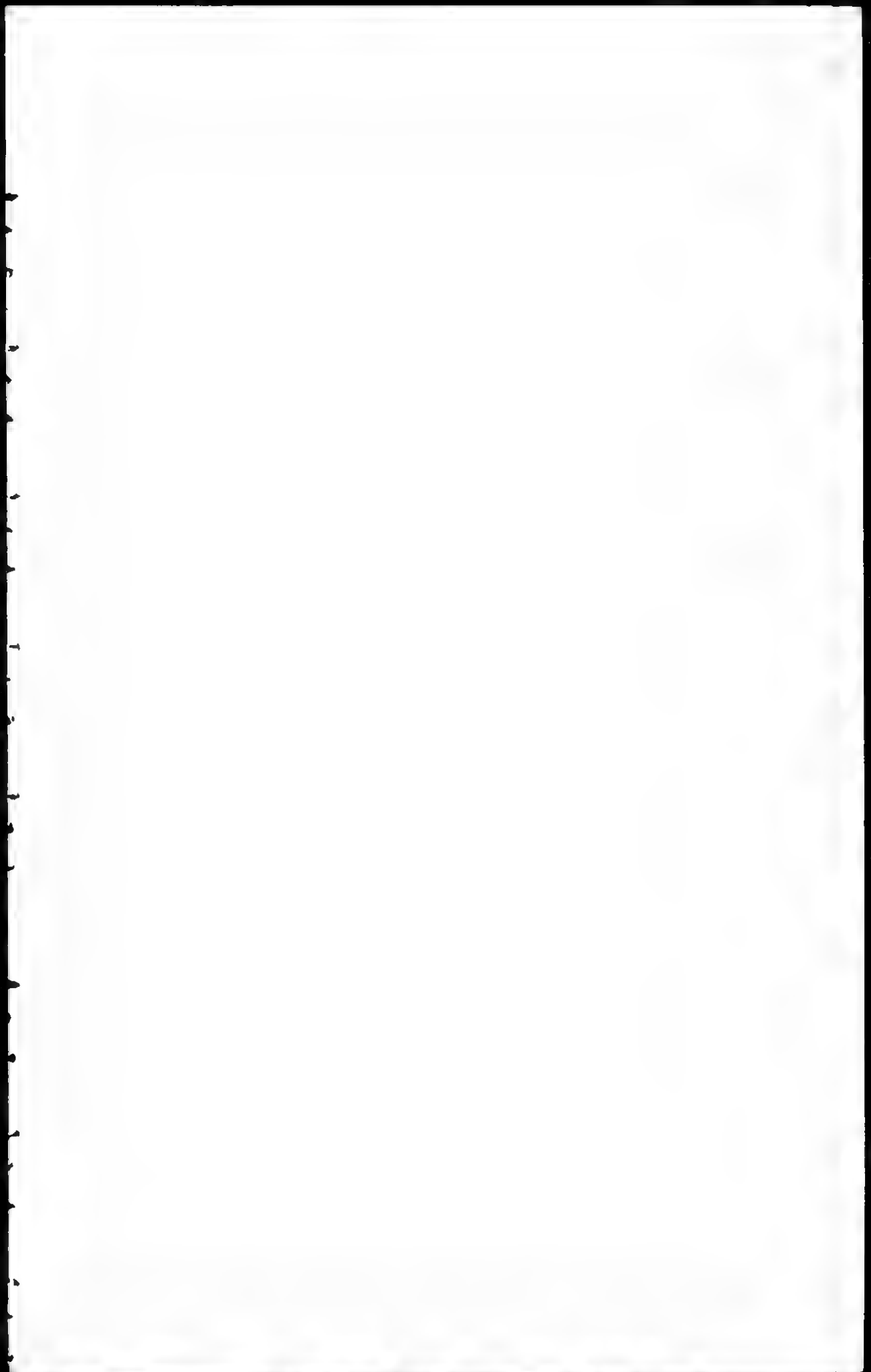
conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

**Section 1, Norris-LaGuardia Act. 47 Stat. 70.  
29 U.S.C. § 101**

Section 1. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

**Section 8, Norris-LaGuardia Act. 47 Stat. 72.  
29 U.S.C. § 108**

Section 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.



REPLY BRIEF FOR APPELLANTS IN NO. 20,152  
AND APPELLEES IN NO. 20,172

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,152**

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants,*

v.

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL.,  
*Appellees.*

---

**No. 20,172**

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL.,  
*Appellants,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellees.*

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On Appeals from Judgment of the United States District Court  
For the District of Columbia

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20,172

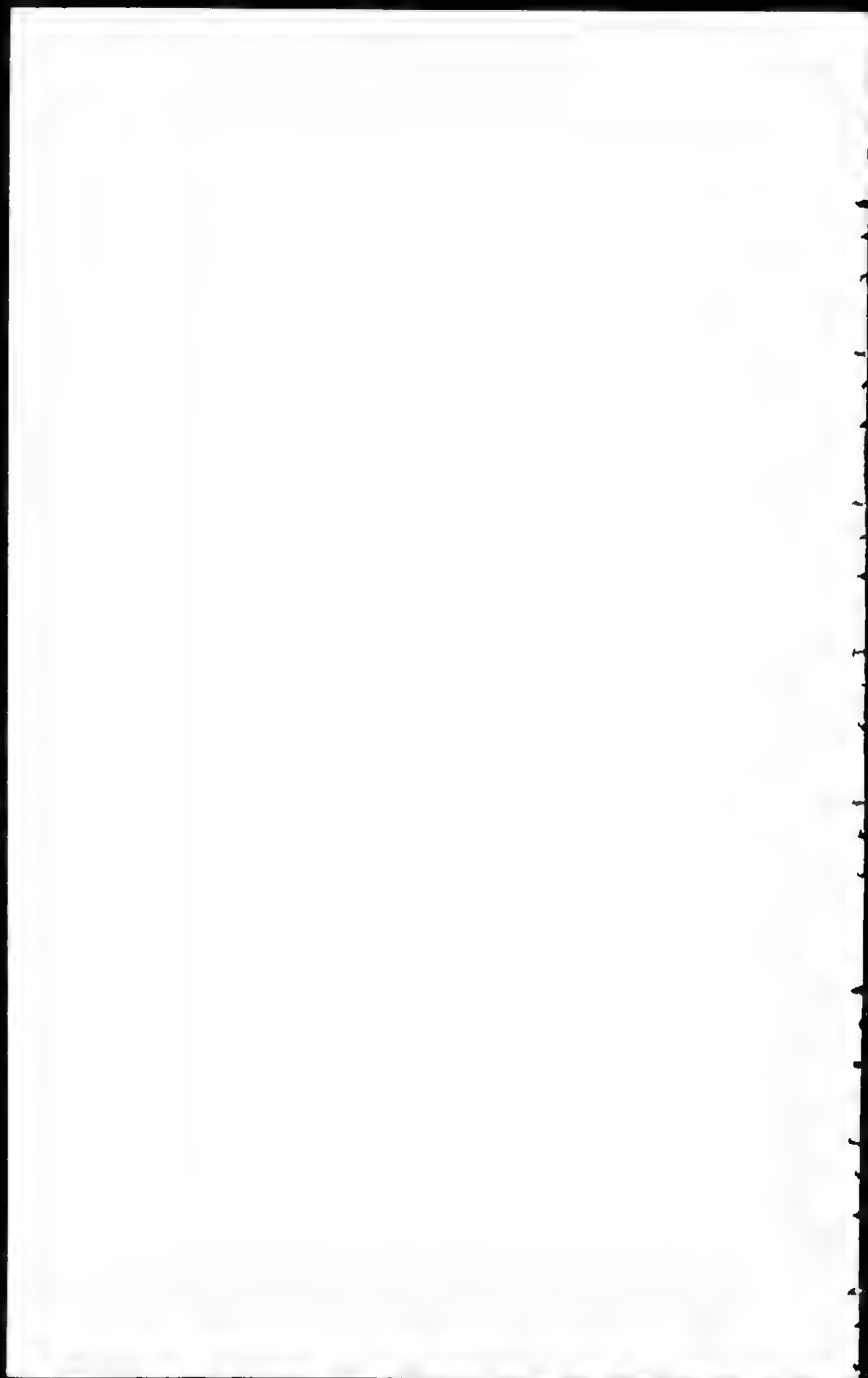
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On Appeals from Judgment of the United States District Court  
For the District of Columbia

---

**REPLY BRIEF FOR APPELLANTS IN NO. 20,152,  
AND APPELLEES IN NO. 20,172**

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**PRELIMINARY STATEMENT**

On May 31, 1966, this Court granted the parties' joint motion to consolidate appeals Nos. 20,152 and 20,172, and granted the parties' proposed briefing schedule. The briefing schedule called for the appellants in 20,152 (the appellees in 20,172) (herein referred to as the "Unions") to file the initial brief on the issues raised in both appeals. The appellees in 20,152 (the appellants in 20,172) (herein referred to as the "Carriers") were to file an answering brief, and the Unions could thereafter file a reply brief.

The Unions filed their initial brief on June 15, 1966 and the Carriers filed their brief on August 19, 1966. This brief is intended as a reply to the Carriers' brief. Since the Unions already have set forth in their initial brief their contentions on all issues raised by the consolidated appeals, this brief will be concerned only with the contentions advanced by the Carriers which have not been dealt with heretofore.

We shall advert to the Carriers' contentions in the same sequence they appear in the Carriers' brief.

### ARGUMENT

We first make a preliminary observation.

Public Law 88-108 established a board of arbitration, subsequently known as Arbitration Board No. 282, to deal with two separate disputes. One involved the use of firemen (helpers) on diesel locomotives (JA 4), and the other concerned the consist of train crews in road and yard service. (JA 3). The latter issue is the only one with which the instant litigation is concerned.

We find it necessary to bring this fact to the Court's attention because the Carriers' brief to this Court in the instant litigation is concerned to a very large extent, on some issues preponderantly, with arguments that pertain only to their dispute with the Brotherhood of Locomotive Firemen and Enginemen, which is not one of the parties to this litigation.

There are numerous references to the Award which are intended apparently as argument on the crew-consist issue but which are taken from the part of the Award dealing solely with the firemen (helpers) dispute.

Thus, for example, the Carriers' brief (page 9) refers to the fact that some 18,000 firemen (helpers) were removed from service pursuant to the Award and that the Carriers paid \$36,000,000 in separation allowances to such former



employees. Under the crew-consist part of the Award, however, only 3,750 *assignments* have been reduced. *No severance payment whatsoever* has been paid to any employee involved in the crew-consist dispute since there is no provision for such payment in the Award.

The Carriers' Statement of the Case is devoted almost exclusively to the firemen (helpers) dispute with only casual reference to the crew-consist dispute which is the only dispute involved in this appeal.

Arbitration Board No. 282 recognized that the crew-consist dispute involved totally different problems from those presented by the firemen (helpers) dispute and called for a totally different approach and treatment. The Arbitration Board considered its mandate under P. L. 88-108 as allowing it to treat the two disputes differently, and it acted accordingly.

In determining the firemen (helpers) dispute (Section II of the Award (JA 43-51)), the Arbitration Board found that the dispute between all the Carriers and the Brotherhood of Locomotive Firemen and Enginemen involved the same issues and should be governed by the same rules. With respect to the crew-consist dispute (Section III of the Award (JA 51-56)), however, the Arbitration Board's approach was entirely different. Thus, while the Award of the Arbitration Board was designed to settle the firemen (helpers) dispute for the period of the Award, the crew-consist dispute was remanded by the Arbitration Board to the individual railroads for further negotiation. (JA 51) The provisions of the Award providing for the resolution of the crew-consist dispute through awards of special boards of adjustment were intended to serve merely as an interim ("not to exceed two years") resolution "[p]ending the consummation of local agreements disposing of the issue" (JA 51) upon its remand for further local negotiations.

Furthermore, while the Arbitration Board provided for the elimination of certain firemen *employees* through pro-

visions of its Award applicable to firemen, the crew-consist provisions of the Award provided that the Carriers *not* be permitted to eliminate *any* employees involved in the crew-consist dispute employed on the effective date of the Award, and permitted merely the temporary elimination of *assignments*, which could be eliminated only upon the employee assigned retiring, resigning, being discharged for cause, or dying; these employees retained all the employment rights they had prior to the Award. Thus, although the Award with respect to the firemen issue affected firemen (helpers) rights to employment, no such provisions were contained in the crew-consist part of the Award and employment rights of such employees were left unaffected by the Award.

We submit that in determining the issues raised on this appeal, the Court should consider the contentions of the parties only on the basis of the facts concerning the crew-consist dispute as dealt with in P.L. 88-108 and in the Award and not on the basis of facts dealing with another class of employees not parties to this litigation.

At page 13 of the Carriers' brief, the Carriers contend that the fundamental issue before the Court is whether "the carriers once again are to be saddled with obsolete and inefficient work rules . . . ." This is not the issue before the Court. If it were, this Court would represent no more than an arbitration board with the duty of determining whether, and to what extent, the crew-consist rules in effect prior to the Award of Arbitration Board No. 282 were obsolete, and whether, and to what extent, such work rules had resulted in overmanning.

The fundamental issue now before this Court is whether the Congress intended that the final resolution of the crew-consist dispute between the parties be settled through collective bargaining or whether the Congress intended the dispute to be resolved by legislative fiat. The Unions submit that the intent of Congress was that upon the expiration of

the Award of Arbitration Board No. 282 the rules in effect prior to the Award were again to be in effect and that any modification of those rules upon the expiration of the Award was to be accomplished through the collective bargaining procedures, as set forth in the Railway Labor Act, during the period of the Award.

We further submit that a determination of this issue must proceed from a consideration of P.L. 88-108, its legislative history, decisions of the courts construing the Act, and the Railway Labor Act. Such determination cannot proceed, as the Carriers apparently contend it should, from what they or a court think Congress should have done, but only from what Congress did.

In our initial brief (pages 13-25) we show that based upon the language of P.L. 88-108, its legislative history, and a decision of the Supreme Court construing that Act, there can be no doubt that Congress intended P.L. 88-108 to serve as no more than an interim resolution of the crew-consist dispute, with the interim to furnish a period for unhurried further collective bargaining, and that upon the expiration of the Award the rules in effect prior thereto automatically again were in effect in the absence of agreement to the contrary.

**I. The Language of P.L. 88-108, its Legislative History, and Cases Construing the Act Support the Unions' Position That the Rules in Effect Prior to the Expiration of the Award Are Again in Effect Upon the Expiration of the Award.**

The Unions' contentions on this point are contained in their initial brief at pages 13-25.

The Carriers contend (Brief, at 14) that the Unions do not support their position, from the statutory language of P.L. 88-108. This is not so.

As page 20 of our initial brief we showed that Section 4 of P.L. 88-108 provided, with respect to the effective period

of the award of the arbitration board, that the award was to remain in effect for a period "not to exceed two years." In addition, we showed that the Award provided (JA 56) that it was to continue in force for two years from the date it took effect. As we concluded there, the plain language of such provisions clearly is inconsistent with the District Court's determination that the rules established by the Award were to be controlling for a *minimum* period of two years, and that the rules thus established created a "new plateau" which is to continue in effect upon the expiration of the Award.

The Carriers also argue (Brief, pages 16-19) that the legislative history of P.L. 88-108 cannot be considered as indicating the Congressional intent in enacting P.L. 88-108 since the legislative history related to the legislation proposed by President Kennedy which would have referred the dispute for determination to the Interstate Commerce Commission and did not concern the legislation as finally enacted which referred the dispute to a board of arbitration. They repeatedly state that the Congress "rejected" the Administration's recommendations and then assume that such repetition establishes the accuracy of their assertion.

Initially, it should be noted that the Carriers completely ignore the report of the Senate Committee on Commerce. The report dealt with the legislation as enacted. (Senate Report on S.J. Res. No. 102, S. Rept. 459, August 23, 1963.) Thus, that Report states (U.S. Code Congressional and Administrative News, 88th Cong., 1st Sess. at 840):

*"Under the terms of the resolution, the arbitration award would be binding for no more than 2 years, unless the parties mutually agree to a different period. The Committee has imposed this limitation in harmony with the President's recommendation, in order to closely limit the scope and impact of the resolution."* (Emphasis added.)

The Carriers likewise ignore the Supreme Court's characterization of P.L. 88-108 as designed to provide a disposi-

tion of the dispute only for an interim period. In *Bro. of Loc. Engineers v. Chicago R.I. & P. R.R.*, 382 U.S. 423 (1966) at 433, the Court stated:

“Their award was to be a complete and final disposition of these issues for a period *not exceeding two years* from the date the awards would take effect . . . .

“ . . . Congress wanted to do as little as possible in solving the dispute which was before it . . . .” (Emphasis added.)

Furthermore, the Carriers understandable attempt to have this Court disregard the legislative history solely because the legislation enacted was not precisely what had been recommended by the President is not justified. At pages 18-19 of our initial brief we show the reasons, as stated by the Committee Report and the Supreme Court, for the changes made by the Congress in deciding to refer the dispute to a board of arbitration instead of to the Interstate Commerce Commission. None of these reasons was in any way connected with the *finality* of the determination to be made. As further stated by the Supreme Court (382 U.S. at 432):

“Congress enacted the bill proposed by the President with one significant change. . . . Instead of that section the Act passed by Congress provided for establishment of an arbitration board . . . .”

to make the interim determinations instead of the Interstate Commerce Commission doing so .

**II. Congress Did Not Integrate the Arbitration Under P.L. 88-108 Into the Railway Labor Act So That the Rules and Procedures Would Continue to Apply After the Expiration of the Award.**

The Carriers argue (Brief, pages 19-25) that since Section 4 of P.L. 88-108 provided that the board of arbitration was to be conducted pursuant to the procedures of Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157 and

158) to the extent applicable and that the board's award was to be subject to Section 9 of that Act (45 U.S.C. § 159), that the award of the arbitration board was to be "integrated" for all purposes into the Railway Labor Act and was to be considered as if it were the result of an agreement to arbitrate. This argument is specious.

The references in P.L. 88-108 to the arbitration provisions of the Railway Labor Act were intended to do no more than provide the *procedures* to be followed by the board of arbitration. That this was the intent of the Congress is clearly seen from the Section-by-Section analysis of P.L. 88-108 contained in the Senate Report on S.J. Res. 102, *supra* (U. S. Code Congressional and Administrative News, 88th Cong. 1st Sess. at 840). The Report states:

"Section 4 would incorporate by reference sections of the Railway Labor Act *concerning the manner in which the arbitration would be conducted.*" (Emphasis added.)

Furthermore, whatever else may be said with respect to P.L. 88-108, it cannot seriously be argued that the enactment providing for compulsory arbitration is an agreement between the parties. Certainly, if Congress intended that the Award be considered as if it were an agreement and that it continue in effect until changed in accordance with the provisions of the Railway Labor Act, it could easily have so provided.

The reference in P.L. 88-108 to Sections 7, 8, and 9 of the Railway Labor Act show, if anything, that the Congress was careful to spell out in detail the extent to which the Award was to be subject to the provisions of the Railway Labor Act. It very clearly provided that the board's procedures were to follow sections 7 and 8, and nowhere "integrated" the Award into the Railway Labor Act.

Since the Award was not an agreement under the Railway Labor Act, the Carriers' arguments with respect to the termination date of *agreements* under the Railway Labor Act is inapposite.

**III. With the Exception of Certain Agreements. All Agreements Entered Into Pursuant to Section III of the Award Expired Either on January 25, 1966 or on the Expiration of the Award.**

The Unions' contentions on this issue are set forth fully in their initial brief, at pages 30-38.

The Carriers' brief, however, does raise one argument not discussed in our initial brief.

The Carriers argue (Brief, at 31) that even if the Unions' position is correct, and that the parties intended in each of the agreements involved that the agreements expire either on January 25, 1966, or the expiration date of the Award, and that the parties intended that upon the expiration of the agreements the rules in effect prior to the agreements were again to become effective, that the agreements nevertheless would continue in effect until one of the parties would serve a notice under Section 6 of the Railway Labor Act (45 U.S.C. §156) stating its desire to change such agreements.

The Carriers' reliance for this proposition is *Manning v. American Airlines, Inc.*, 329 F. 2d 32 (2d Cir. 1964). In *Manning*, the parties entered into an agreement establishing rules for the check off of union dues. The agreement provided that it was to "continue in full force and effect until April 30, 1963, and shall be subject to renewal thereafter only by mutual agreement of the parties hereto." The Court held that notwithstanding the express terms of the agreement to the contrary, the expiration of the agreement, without renewal thereof, did not terminate the obligation of the carrier to continue to observe the checkoff provisions of the agreement.

Similarly here, the Carriers contend, even if the parties intended that their agreements terminate either on January 25, 1966, or on the expiration of the Award, the agreements continue in effect until one of the parties serves a Section 6 notice under the Railway Labor Act to change the agreements.



Initially, and with due deference, we submit that the decision of the Court in *Manning* was erroneous and should not be followed by this Court. The rationale of the Court's decision in *Manning* was that (329 F. 2d at 34):

"The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination. If the basic agreement of 1958 had no automatic renewal clause, § 6 would have nonetheless applied; unless the terms of the agreement were still to be followed there would be 'an intended change' which would bring into play the thirty-day notice provision of § 6 and with it the requirement of the second section that the *status quo* be maintained until compliance with all demands of the section was had."

We agree with the Court that a Section 6 notice is required whenever one of the parties to an agreement desires to change the existing collective bargaining agreement. Under such circumstances, a Section 6 notice is required so that the other party to the agreement is made aware of the proposed change in order that negotiating conferences can be scheduled to discuss the proposal, and so that, if no agreement can be reached on the property, the dispute may be referred by any of the parties to the National Mediation Board for its mediatory services in attempting to settle the dispute.

We fail to find any provision in Section 6 of the Act, however, that would require a Section 6 notice to be served when both parties to an agreement state in the agreement that it shall remain in effect for a certain period, and not thereafter. Under such circumstances, the expiration of the agreement does not constitute a modification of the agreement but rather the culmination of what the parties had agreed. Thus, the expiration of the checkoff agreement in *Manning* was not a *change* in the agreement, but the fulfillment of the intention of the parties in making the agreement.



Similarly here, since the parties to the agreements intended that crew-consist rules be in effect only until either January 25, 1966, or the expiration of the Award, the revival of the rules in effect prior to such agreements is not a *change* in such agreements but is part of such agreements.<sup>1</sup>

The only effect of requiring the service of a Section 6 notice under the circumstances here, is to afford one of the parties to the agreements the opportunity to renounce their agreements. This precisely is what the Carriers are seeking to do in this case.

Furthermore, even in *Manning* the Court recognized that there might be situations in which its determination would not be applicable. Thus, the Court stated (329 F. 2d at 34):

“Passing the question whether and how parties subject to the Railway Labor Act can lawfully make agreements ‘affecting rates of pay, rules, or working conditions’ so that these will not be subject to § 6, *as might be convenient when unusual situations of short duration arise within the period of a basic contract*, we think the argument puts more strain on the words of the check-off agreement than these will bear.” (Emphasis added.)

The agreements in the present case clearly involve “unusual situations of short duration [which arose] within the period of a basic contract.” Certainly the situation is unusual. Also, the agreements cover a relatively short period during which a collective bargaining agreement in the railroad industry remains in effect, a period of less than two years. Finally, it is a period, within the period of the

---

<sup>1</sup> In this connection, the Carriers’ statement in its brief (p. 30) that, with the exception of two agreements, the Unions do not contend that the agreements “contain any language providing for the automatic restoration of the old rules upon their expiration” is erroneous. It is our position that each of the agreements which modified preexisting crew-consist rules and which provided either that the agreement was to terminate on January 25, 1966, or upon the expiration of the Award, thereby explicitly provided that upon the expiration of the agreement the prior rules which were modified by the agreement are automatically again in effect.

parties' basic crew-consist agreements. In these situations, there is every reason to hold that the agreements should be carried out as contemplated by the parties.

**IV. The Award of Arbitration Board No. 282 Expired on January 24, 1966.**

The Unions' contentions on this issue are set forth in their initial brief, at pages 28-30.

The Carriers' contention (Brief, pages 34-36) that the Unions' *waived* their right to argue that the Award expired on January 24, 1966 and not January 25, 1966 is raised for the first time in their brief. Such contention was not made before the District Court. Their statement (Brief, at 36) that the Court below *refused to consider* the argument is erroneous. The Court's determination, albeit erroneous, was made on the basis of its determination of the merits of the argument.

The Carriers' brief (p. 36) raises the additional novel argument that even if the award by its terms would have expired on January 24, 1966, the parties' reference to the expiration date as January 25, 1966, "would constitute an extension of the award for an additional day by agreement, as is expressly permitted by P.L. 88-108 and the Award."

Unfortunately, the Carriers do not specify which parties made such "agreement" nor when such "agreement" was made. Certainly counsel for the parties had no such authority, nor is there anything in the record to show that the parties to the Award on the Carrier involved in this issue entered into such "agreement." The Carriers' contention that an erroneous "common understanding" resulted in an extension of a Congressionally specified time has no warrant in law or reason.

#### V. Section 6 Notices Served During the Period of the Award

The Carriers argue that the Section 6 notices served by the Unions prior to the expiration of Award 282 were invalid and could create no obligation to bargain as provided in the Railway Labor Act because, as they repeatedly assert, P.L. 88-108 was intended to "suspend" the procedures of the Railway Labor Act and any obligations imposed by that Act for a period of two years after the effective date of the Award with respect to the subject matter dealt with in the Award. The Carriers can point to no provision of P.L. 88-108 "suspending" the obligations imposed by the Railway Labor Act for the two-year period. The only reference in P.L. 88-108 to the Railway Labor Act is to the procedures the Arbitration Board were to follow (Sections 7 and 8) and to the method and grounds of impeachment of the award of the arbitration board (Section 9). The Carriers nowhere explain how such reference to the procedural provisions of the Railway Labor Act can be read to suspend the obligations of the Railway Labor Act imposed on the parties with respect to negotiating agreements. They simply repeatedly assert it and here again assume that such repetition establishes the accuracy of the assertion.

Furthermore, the Carriers' assertion that P.L. 88-108 "suspended" all other provisions of the Railway Labor Act and all obligations of the Railway Labor Act to bargain amounts to a contention that the Award of Arbitration Board 282 was invalid. (The validity of the Award has been established and cannot now be questioned.) As we have shown above, the Award of Arbitration Board 282 provided with respect to the crew-consist issue that it "shall be remanded to the local properties for negotiation. Pending the consummation of local agreements disposing of the issue, the following provisions shall govern the use of trainmen . . . ." but not to exceed two years from the effective date of the Award. If the Carriers are correct in their assertion that they had no obligation to bargain during the period of the Award, because P.L. 88-108 so provided, then this provision of the Award flies in the teeth of the statute.

**VI. The Applicability of the Norris-LaGuardia Act.**

The Carriers argue that since no injunctive relief was sought by the Carriers aside from the temporary restraining order, which expired prior to the entry of the judgment below, the issue of the Norris-LaGuardia Act is moot. If this is so, the issue was moot prior to the entry of the judgment of the lower Court, holding the Norris-LaGuardia Act inapplicable. (JA 180, par. 10.)

The Unions requested the lower Court to amend its opinion by deleting therefrom any reference to the applicability of the Norris-LaGuardia Act on the ground that the issue was moot but the District Court refused to do so. As the matter now stands, therefore, there is a published opinion and an unreversed and unvacated judgment of the District Court in this circuit holding the Norris-LaGuardia Act inapplicable.

If this Court agrees that this issue is moot, we request the Court to vacate that part of the District Court's judgment which refers to the Norris-LaGuardia Act.

**VII. The "Protective" Provisions of the Award of Arbitration Board No. 282.**

A recurrent theme running through the opinions of the Court below and the Carriers' brief concern the "benefits" accruing to employees from the Award in the form of "protective" provisions. The inference is that if the crew-consist rules established by or pursuant to the Award are held no longer to be in effect that employees will lose valuable and important rights as provided in the "protective" provisions of the Award. Nowhere in the opinions of the Court below, however, does the Court set forth what such "protective" provisions provide, nor does it discuss in what ways such "protective" provisions afford rights to employees involved in the crew-consist dispute which these employees did not have before.

The "protective" provisions with respect to employees involved in the crew-consist dispute are found in Section III, Part D of the Award. (JA 55-56)

The "protective" provisions provide, in substance, that any employee employed on the day the Award became effective could not be adversely affected by any decision of a special board of adjustment convened pursuant to Section III, Part B of the Award. There is no other "protection."

Thus, for example, if the rules in effect on the day preceding the effective date of the Award required that a particular train crew consist of a conductor and three trainmen, and employee Jones was, as a result of his seniority, the third trainman on the crew on the date the Award became effective, an award of a special board of adjustment under Award 282 permitting the carrier to reduce the crew to a conductor and two trainmen would not permit the carrier to oust Jones from his assignment. The carrier would not be permitted to reduce the crew until Jones retired, was discharged for cause, or died.

The above, in substance, is the "protection" afforded trainmen and switchmen employees under the Award. Such "protection", however, is precisely the protection to which such employees would be entitled if the Award had never been made, or if the rules in effect prior to the Award again become effective.

Using the same example as above, if the agreement between the parties required the size of the train crew to consist of a conductor and three trainmen, Jones, as the third trainman, could not be ousted of his job on that crew unless and until the carrier and the union negotiated an agreement permitting the carrier to reduce the size of the crew.

It thus becomes obvious that the so-called "protective" provisions of the Award did no more than *retain* the rights the employees possessed before the Award, and which they will continue to possess upon the restoration of the crew-consist rules in effect prior to the Award. The sole purpose

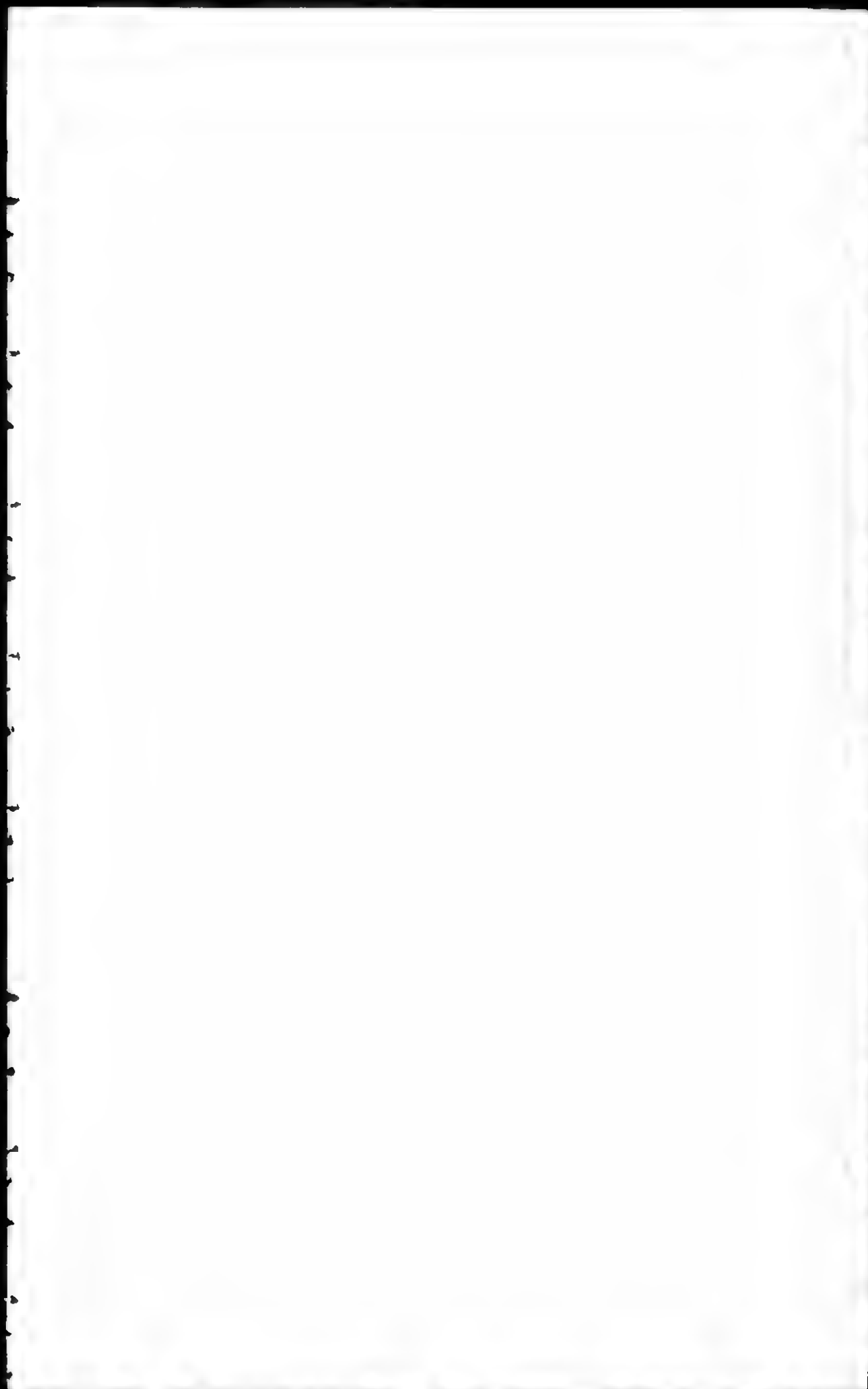
of the "protective" provisions was to limit the application of the Award so that employees employed on the effective date of the Award would not be ousted from employment by virtue of the Award and that their rights to employment gained through collective bargaining would not be destroyed; such rights of those not working on that date were destroyed.

Respectfully submitted,

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September, 1966.



**BRIEF FOR APPELLEES IN NO. 20,152 AND  
APPELLANTS IN NO. 20,172**

---

IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,152**

---

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,  
*Appellants,*

*v.*

THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
*ET AL., Appellees.*

---

**No. 20,172**

---

THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
*ET AL., Appellants,*

*v.*

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,  
*Appellees.*

---

ON APPEALS FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

United States Court of Appeals  
for the District of Columbia Circuit

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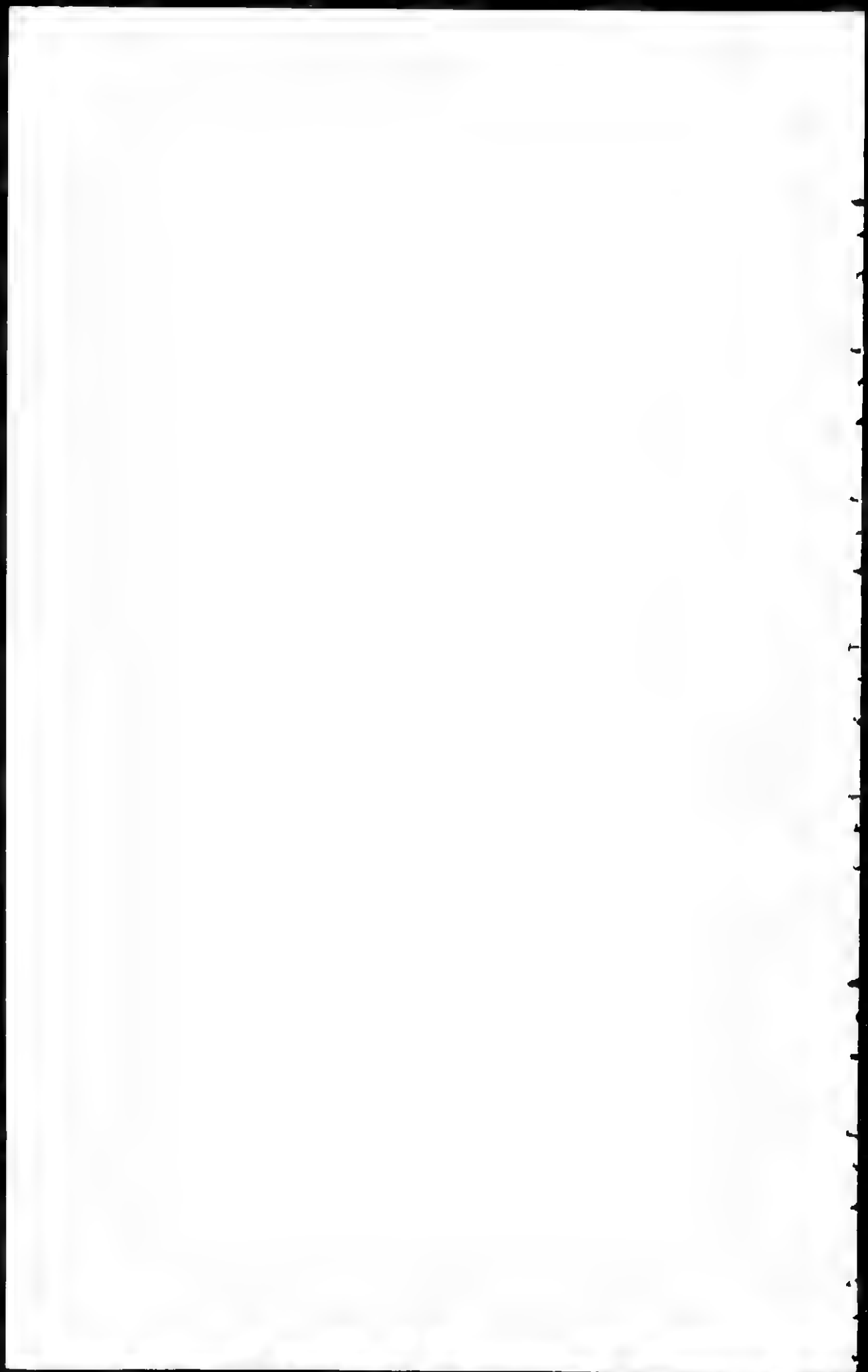
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### Questions Presented

In our opinion, the following questions are presented:

1. Upon the expiration of the two-year period in which the Award by Arbitration Board No. 282 "shall continue in force," do the modifications in crew-consist rules made by or pursuant to the Award, including provisions for the protection of existing employees, continue to apply until changed in accordance with the Railway Labor Act or do the old rules automatically revive and apply thereafter until changed in accordance with the Railway Labor Act?

2. Do the crew-consist agreements and awards by special boards of adjustment made pursuant to Section III of the Award, including a special board award executed on January 25, 1966, continue to apply after expiration of the two-year period in which the Award "shall continue in force" until changed in accordance with the Railway Labor Act?

3. May the procedures established by Section III of the Award for changing rules requiring a specified number of trainmen be invoked after the expiration of the two-year period in which the Award shall continue in force and, if not, may those procedures be completed if invoked but not completed prior to the expiration of that period?

4. Does an agreement entered into with a union by certain carriers who were not subject to the crew-consist provisions of the Award, which agreement by its terms "shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered" pursuant to Section III of the Award, continue to apply after January 25, 1966 until changed in accordance with the Railway Labor Act?

5. Whether two carriers which were served by the union representing their crew-consist employees with the Section 6 notice of September 7, 1960 disposed of by the Award, which notice remained outstanding as of the effective date of the Award, were subject to Section III of the Award, and whether the union is estopped from contending otherwise after having entered into crew-consist agreements with each of the said carriers which agreements were expressly stated therein to have been made pursuant to Section III of the Award whereby the union and its members obtained the benefit of the protective provisions of the Award?

6. Whether notices of proposed changes in crew-consist rules purportedly served pursuant to Section 6 of the Railway Labor Act during the period of the Award were premature and did not become effective under the Railway Labor Act until the day after the expiration of the period in which the Award "shall continue in force?"

7. Whether there is any issue before the Court as to the applicability of the Norris-LaGuardia Act when the only injunctive relief granted below was a temporary restraining order which expired before the appeals were taken and, if the issue is before the Court, whether the said Act is applicable to a request for injunctive relief under the circumstances of this case?

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 20,152**

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BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,  
*Appellants,*

*v.*

THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
ET AL., *Appellees.*

---

**No. 20,172**

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THE AKRON & BARBERTON BELT RAILROAD COMPANY,  
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---

ON APPEALS FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

**BRIEF FOR APPELLEES IN NO. 20,152 AND  
APPELLANTS IN NO. 20,172**

These are cross appeals from a judgment entered on April 6, 1966. Appellants in No. 20,152 and Appellees in No. 20,172 are the Brotherhood of Railroad Trainmen, one of its locals, and the Switchmen's Union of North America, which are hereinafter collectively referred to as the "unions." Appellees in No. 20,152 and Appellants in No.



20,172, upon whose behalf this brief is filed, are 146 railroads, which are hereinafter collectively referred to as the "carriers." The appeals have been consolidated by order of this Court pursuant to a Joint Motion which also provided that all issues raised by either appeal would be briefed first by the unions and then by the carriers, and that a reply brief may be filed by the unions.

A number of other cases are pending here which in part involve similar issues. They include Docket Nos. 20,158 and 20,191, which are cross appeals by the Order of Railway Conductors and Brakemen and by the carriers from a separate judgment entered in the same proceeding below, and Docket Nos. 20,192, 20,193, 20,215 and 20,216, which are cross appeals by the Brotherhood of Locomotive Firemen and Enginemen and by the carriers from judgments entered in two separate proceedings which were consolidated below. In a Memorandum and Order entered on June 15, 1966, in the latter Dockets, this Court directed that the three groups of appeals be heard at the same session before the same division.

#### Statement of the Case

In 1959, the overmanning of trains resulting from obsolete work rules having little or no relation to actual manpower needs in the light of modern technological developments constituted a serious problem. See *Brotherhood of Locomotive Eng. v. Baltimore & Ohio R. Co.*, 310 F.2d 503, 505-506 (7th Cir., 1962), aff'd, 372 U.S. 284 (1963). A May 18, 1959, Report by the Interstate Commerce Commission, for example, found that "there is confirmation of the belief that the railroad wage structure, including work rules and certain full-crew laws, may unjustifiably involve uneconomic use of labor." *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 480. On or about November 2, 1959, in an effort to overcome this problem, most of the nation's rail-

roads served the unions representing their operating employees with notices under Section 6 of the Railway Labor Act (44 Stat. 582, as amended, 45 U.S.C. § 156). While a number of proposals were made, the two relevant here proposed, in general, the elimination of all rules requiring the use of firemen (helpers) on locomotives (other than steam powered) in freight and yard service, and the elimination of all rules which required the use of a stipulated number of trainmen on crews in road and yard service, with both matters being left to managerial discretion. (J.A. 3-4, 14-16, 19-20). On or about September 7, 1960, the unions served the railroads with Section 6 notices of counterproposals which, among other things, would generally require the use of a fireman on all locomotives and the use of two trainmen on all road and yard crews (J.A. 4, 16-17, 20).

After unsuccessful negotiations by the parties the President appointed a Presidential Railroad Commission to investigate the controversy and use its best efforts to bring about a settlement (J.A. 5, 20). In its February 28, 1962 Report to the President, the Commission recommended generally (p. 7) that "the rules governing the manning of engines and trains and the assignment of employees be revised to permit the elimination of unnecessary jobs and at the same time to safeguard the interests of the individual employees adversely affected." The Commission found that, although it was not possible to say "that nowhere in the United States is there in operation a single run which requires the services of a [fireman] to render it safe and efficient," such situations are so "unique" that they should not be made the subject of a general rule requiring the use of firemen (pp. 45-46). Accordingly, the Commission recommended that rules requiring the use of firemen be abrogated and that, subject to measures for the protection of men already employed, the carriers should be permitted in their discretion to discontinue firemen's assignments (pp. 48-

50). As to crew-consist, the Commission determined that the existing rules, most of which had been developed more than 30 years ago and some of which went back to the 19th century (p. 55), had resulted in "some overmanning . . . but little undermanning" (p. 57). Accordingly, the Commission recommended that proposals for changes in crew-consist rules, if not agreed upon, be arbitrated by special tribunals applying specified guidelines, with various protections for the men already employed (pp. 59-60). These recommendations were accepted by the carriers but were rejected by the unions.<sup>1</sup>

Efforts by the National Mediation Board to mediate the dispute also were unsuccessful, and the Board terminated its services on July 16, 1962 after the unions refused a proffer of arbitration under Sections 7 and 8 of the Railway Labor Act. The carriers served notice that they intended to put their proposals into effect and the unions resorted to litigation aimed at preventing that from being done. *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963). The Supreme Court eventually held that the November 2, 1959 Section 6 notices served by the carriers were valid, and that the carriers were free to implement their proposals by self-help as the procedures of the Railway Labor Act had been exhausted, subject to the possible creation of an emergency board under Section 10 of the Railway Labor Act. *Id.*, at 289-291.

An emergency board was appointed by the President under Section 10. The Report to the President by Emergency Board No. 154,<sup>2</sup> submitted on May 13, 1963, contained recommendations which generally paralleled those made by the Presidential Railroad Commission, except for a suggestion

<sup>1</sup> See H. Rept. No. 713, 88th Cong., 1st Sess., 7.

<sup>2</sup> The Report is set out in full in Hearings on H.J. Res. 565 before the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. (hereinafter referred to as "House Hearings"), 42-49.

that a special board procedure be utilized in resolving disputes over the use of firemen (helpers). Among other things, the Report noted that even "the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished" (House Hearings, at 45). The recommendations were accepted by the railroads, but rejected by the unions. H. Rept. No. 713, *supra* at 7.

Under Section 10 of the Railway Labor Act, "for thirty days after" an emergency board "has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." 45 U.S.C. § 160. That 30-day period expired on June 12, 1963, and the carriers thereafter were free to implement their November 2, 1959 proposals, including the abolition of existing fireman (helper) and crew-consist work rules and the use of firemen and trainmen only as deemed necessary in the exercise of managerial discretion. On the other hand, the unions were free to strike or to resort to other self-help. *Locomotive Engineers v. B. & O. Co.*, *supra* at 291.

Further negotiations during the 30-day period and thereafter also were unsuccessful. A proposal by the Secretary of Labor for disposition of the fireman (helper) and crew-consist issues along the lines of the recommendations by the Emergency Board was accepted by the carriers but rejected by the unions; a proposal by the President to submit all issues to Justice Goldberg for final determination was accepted by the carriers but rejected by the unions; a proposal by the Secretary of Labor to submit the fireman (helper) and crew-consist issues to a board of arbitration under Sections 7 and 8 of the Railway Labor Act was accepted by the carriers and accepted in principle by unions, but procedural objections by the unions could not be worked out. See H. Rept. No. 713, *supra* at 8, 12; *Opinion of the Neutral Members*, 41 Labor Arbitration 680, 683-684 (1963).

When it became apparent that a disastrous strike was imminent, the President proposed preventive legislation and the Congress responded by enacting P.L. 88-108 (77 Stat. 132). The provisions and legislative history of that statute will be discussed in detail in our Argument. For present purposes, it suffices to note that the Congress rejected the approach urged by the Administration—interim regulation by the Interstate Commerce Commission while the parties continued to negotiate in an effort to reach an agreement disposing of their 1959 and 1960 Section 6 notices. Rather, the key fireman (helper) and crew-consist issues were submitted to arbitration and the arbitration award was to constitute a “complete and final disposition” of the portions of the Section 6 notices raising those issues.<sup>3</sup>

Arbitration Board No. 282 was required, by Section 3 of P.L. 88-108, to incorporate into its award “any matters on which it finds the parties were in agreement” and to “give due consideration to those matters on which the parties were in tentative agreement.” In upholding the validity of the Award, the courts concluded that the Board had complied with that requirement. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & O. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), *aff’d per curiam*, 118 U.S. App. D.C. 100, 331 F. 2d 1020 (D.C. Cir., 1964), *cert. den.*, 377 U.S. 918 (1964).

As to the fireman (helper) issue, the Board was “able to develop and complete the parties’ tentative agreements concerning the treatment of individual firemen,” but “found no substantial structure of agreement . . . concerning the proposed elimination of firemen’s jobs.” *Opinion of the Neutral Members, supra* at 686. After an independent review of the evidence, the Board agreed with the Presidential

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<sup>3</sup> Section 6 of P.L. 88-108 required the parties to resume collective bargaining on the issues which were not submitted to arbitration, and an agreement disposing of those issues was reached on June 25, 1964 (J.A. 8, 22).

Railroad Commission "that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels." *Id.*, at 688. From its "study of the record," the Board was "convinced . . . that the number of road freight and yard assignments in which considerations of safety and efficiency dictate the need of firemen is relatively small," and that a procedure which would permit "the firemen's organizations sole discretion to decide that firemen must be used in up to ten per cent of all crew assignments . . . provided a sufficient margin for error." *Id.*, at 691.

Accordingly, Section II of the Award modified the existing rules governing the use of firemen so as to permit the eventual elimination of firemen on all but 10% of the regular assignments on diesel locomotives in freight and yard service. Generous protections were provided, however, for existing employees. In general, firemen who had less than two years seniority as of the effective date of the Award could be separated from employment upon the payment of substantial separation allowances, those with between two and ten years seniority could be offered comparable jobs (with five-year guarantees against any reduction in wages and the payment of relocation expenses) and separated from employment upon the payment of substantial separation allowances if they refused to accept such job offers, and those with more than ten years seniority were to be retained in engine service unless they retired, were discharged for cause or otherwise were removed from employment by natural attrition. J.A. 43-50.

Insofar as the crew-consist issue was concerned, the Board found that the existing "myriad of local arrangements has led to numerous inconsistencies in the manning of crews," that "some of the existing rules, originating as they did more than a half-century ago, are anachronistic

and do not reflect the present state of railroad technology and operating conditions," that "some overmanning exists in road and yard crews as a result of schedule rules and local agreements," and that, although "the evidence of undermanning is less persuasive, we must also acknowledge this possibility on some assignments." *Opinion of the Neutral Members, supra* at 693-694. The Board found that the parties had reached tentative agreements which would largely dispose of this issue (*id.*, at 695-696), and Section III of the Award, "[e]xcept for minor modifications, . . . reflects each one of these tentative agreements, both in matters of approach and in matters of substance." *Id.*, at 696.

Thus, in substantial accordance with the tentative agreements of the parties, Section III established a procedure whereby, in general, written notice could be given of proposed changes in rules requiring a specified number of trainmen, the interested carrier and union were required to confer and attempt to agree upon the proposed changes, and either party could submit the dispute to a special board of adjustment for final decision pursuant to "guidelines" specified in the Award if no agreement was reached. No trainmen could be separated from service pursuant to the Award, and trainmen in active service were to be retained in road or yard service unless they retired, were discharged for cause or otherwise were removed from employment by natural attrition. J.A. 51-56.

Pursuant to Section II of the Award, the railroads reduced the number of firemen employed by some 18,000, paid separation allowances amounting to some \$36,000,000, and provided comparable jobs for some 1200 former firemen (J.A. 142-143). Pursuant to Section III of the Award, the railroads were authorized to discontinue some 7500 crew-consist positions as soon as they were not needed to provide employment to the protected employees (J.A. 142), by reason of 92 agreements and 83 special board awards



executed at various times between May of 1964 and January 25, 1966 (J.A. 62-70). When the two-year period in which the Award by Board 282 "shall continue in force" expired, about half of those assignments had been eliminated and it is estimated that from two to four years will be required to eliminate the remainder through attrition of the protected employees (J.A. 142). In addition, proceedings were pending before four special boards of adjustment established under the Award (J.A. 70-75), when the Award expired.

Prior to the expiration of the Award, the Brotherhood of Railroad Trainmen served some 85 of the railroads, purportedly under Section 6 of the Railway Labor Act, with notices of proposed changes in crew-consist rules (J.A. 78) which were substantially identical with the portion of the September 7, 1960 Section 6 notices relating to crew-consist (compare J.A. 16-17 with J.A. 116-119). Without waiving their position that such notices under the Railway Labor Act were premature prior to the expiration of the Award, most of those railroads served the BRT with notices of counterproposals which were also noticed by a number of other railroads who desired to participate in national handling of the issue (J.A. 79, 106-112).

In its judgment entered on April 6, 1966 (J.A. 175-181), the District Court declared, among other things, that the procedures provided in Section III of the Award for changing crew-consist rules could not be invoked after the expiration of the Award; that the special board proceedings pending as of the expiration of the Award could not validly be completed; that the modification in the prior crew-consist rules made by the special board awards and crew-consist agreements<sup>4</sup> under the Award continue to apply after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act have been

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<sup>4</sup> With the exception of three crew-consist agreements which expressly provided for restoration of the old rules upon the expiration of the Award (J.A. 178).



exhausted in regard to valid Section 6 notices of proposed changes; that the "protected" employees shall continue to enjoy the protections provided by the Award;<sup>5</sup> and that Section 6 notices of proposed changes in crew-consist rules served during the period of the Award did not become effective until the day after the expiration of the Award. The judgment is limited to a declaration of the rights of the parties and does not provide injunctive relief. A temporary restraining order against a strike, as extended by consent, expired on March 29, 1966 (J.A. 35-38, 40), prior to the judgment appealed herein.

### **Statutes Involved**

We set forth in the Appendix A hereto certain statutory provisions in addition to those set forth in the Appendix to the unions' brief.

### **Summary of Argument**

The unions' claim that the old rules were automatically restored upon the expiration of the Award is without support in the language or legislative history of P.L. 88-108. Rather, that language and legislative history demonstrate that the Congress intentionally integrated the arbitration of the fireman (helper) and crew-consist issues into the "time-tested provisions of the Railway Labor Act" under which the rules established by an agreement or arbitration award continue to apply after the expiration of the term of such agreement or award until changed in accordance with the "major" dispute procedures of the Act. While those procedures were supplanted during the two-year period of the Award, upon the expiration of that period the parties once more were subjected to the "regular established procedure of collective bargaining" under the

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<sup>5</sup> The District Court found it unnecessary to decide whether the protections provided by the Award were subject to change under the Railway Labor Act after the expiration of the Award (J.A. 151-153).

Act upon the basis of the rules established by or pursuant to the Award, which rules continue to apply until changed in accordance with the Railway Labor Act. The Congress could not reasonably have intended and did not intend to reinstate the old rules, which have been condemned by several impartial governmental bodies, in preference to a continuation of the modification of those rules made by an arbitration board dominated by impartial neutral members, and many provisions of the Award anticipated by the Congress are inconsistent with any such intent.

The crew-consist agreements and awards by special boards of adjustment made pursuant to the Award, consequently, continue to apply after the expiration of the Award until changed in accordance with the Railway Labor Act. The unions concede that this is so with respect to 43 crew-consist agreements which expressly so provide, and the arguments summarized above establishes that it is so with respect to the other agreements and crew-consist awards, including an award executed on January 25, 1966 which all parties understood to be the last day of the two-year period of the Award and which the unions admitted to be within the period of the Award.

The procedures established by the Award for making changes in rules requiring a stipulated number of trainmen may be invoked until such procedures are changed in accordance with the Railway Labor Act. There is no basis for holding that the provisions for the protection of existing employees in Section III-D of the Award continue but the procedural provisions in Section III-A, B and C do not. But even if those procedures may not be invoked after the expiration of the Award, any proceedings initiated thereunder prior to the Award may be completed.

While not subject to the crew-consist provisions of the Award, the Southern Railway Company and certain of its subsidiaries entered into a crew-consist agreement which is to "continue in effect until January 25, 1966, and thereafter

to the same extent as if it were an award of a Special Board of Adjustment'' under Section III of the Award. By its own terms, therefore, that agreement continues to apply after the expiration of the Award just as does an award of a special board of adjustment.

The Tennessee, Alabama & Georgia Railway Co. and the Terminal Railway, Alabama State Docks, were served by the union representing their crew-consist employees with the organizations' Section 6 notice of September 7, 1960, in common with most of the other railroads, and such notice remained outstanding when P.L. 88-108 was enacted and the Award became effective. Consequently, those carriers were subject to the crew-consist provisions of the Award. This was recognized by the union, which entered into crew-consist agreements with each carrier, which were expressly stated to have been made pursuant to the Award. The union and its members thereby obtained the benefit of the protective provisions of the Award, and the union is estopped from contending at this late date that the two carriers were not subject to the Award.

Notices proposing changes in crew-consist rules, which purportedly were served pursuant to Section 6 of the Railway Labor Act during the period of the Award, were premature and did not become effective under the Railway Labor Act until the day after the expiration of the Award. To permit a party to require bargaining upon such notices and to exhaust the procedures of the Railway Labor Act with respect thereto during the period of the Award would be contrary to the language and legislative history of P.L. 88-108 and to the provisions of the Award.

The only injunctive relief granted below, a temporary restraining order, expired prior to the entry of judgment and to the appeals. Any issue as to the applicability of the Norris-LaGuardia Act, consequently, is moot. If the issue is properly before the Court, the ruling below should be affirmed.

### Argument

The fundamental issue before the Court is whether the carriers once again are to be saddled with obsolete and inefficient work rules which resulted in overmanning that has been condemned by every governmental body which has considered the matter, with the consequent necessity of hiring thousands of unnecessary employees who would perform no useful function to the cost of the public as well as of the carriers themselves. The Congress could not reasonably have intended such a result and we demonstrate in this brief that it did not so intend. Rather, the rules and procedures established by or pursuant to the Award were intended to continue to apply after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to valid proposals under Section 6 of that Act to change such rules and procedures. The effect of the expiration of the two-year period during which the Award "shall continue in force" is to subject the parties once again to normal collective bargaining under the Railway Labor Act with respect to future changes in the rules and procedures established by or pursuant to the Award which reasonably may be said to be justified by the experience of the parties under those rules and procedures in the light of the findings by Arbitration Board No. 282.

### I

#### **The Crew-Consist Rules in Effect Prior to the Award Were Not Automatically Restored Upon the Expiration of the Two-Year Period of the Award.**

The unions contend that, in the absence of an agreement to the contrary, the rules in effect prior to the effective date of the Award automatically revived upon the expiration of the Award and continue to apply thereafter until changed

pursuant to the Railway Labor Act, with one apparent exception. While their position in that regard is not made clear in the brief filed with this Court, the unions contended below (see J.A. 151) that the provisions of the Award requiring that existing employees receive crew-consist employment until removed from employment by natural attrition not only continued to apply after the expiration of the Award but also were not subject to change under the Railway Labor Act even after the expiration of the Award. The basis for their position that the "protective" provisions of the Award not only survive the expiration of the Award but are permanent in nature, while all other provisions of the Award are nullified upon the expiration of the Award, has never been explained and is unexplainable on any basis other than self-interest. We think it sufficient, therefore, to demonstrate herein that the unions' contention that the old rules are automatically restored is unsupported by either the statutory language or the legislative history. Both the statute and the legislative history affirmatively support the carriers' view that the modifications in the old rules made by or pursuant to the Award (including the protective provisions thereof) continue to apply after the expiration of the Award until changed in accordance with the Railway Labor Act.

*A. The Statutory Language Does Not Support the Unions' Contention.*

The unions in their brief do not point to any provision in P.L. 88-108 or the Railway Labor Act which even arguably supports their contention that the old rules were automatically restored upon the expiration of the Award. Nor could they do so.

Insofar as the Railway Labor Act is concerned, we have related the circumstances whereby the carriers have been free since June 12, 1963 to abolish the rules which the

unions now contend must be applied after the expiration of the Award until changed in accordance with the Railway Labor Act. As the Supreme Court held, the November 2, 1959 Section 6 notices proposing to eliminate those rules were valid and could be implemented by the carriers in the exercise of self-help thirty days after the emergency board submitted its report to the President. See pp. 2-5, *supra*. Apart from P.L. 88-108, consequently, there is no basis for a contention that the railroads are now required to apply the old rules.

P.L. 88-108 did reimpose upon the railroads, for a limited period, the obligation to restore and observe the rules in effect prior to November 2, 1959. Section 1 provided:

"That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored."

The above-quoted provision of P.L. 88-108 is the reason that the rules which the carriers proposed to eliminate in their November 2, 1959 Section 6 notices were in effect immediately prior to the effective date of the Award.

But neither Section 1 nor any other provision of P.L. 88-108 requires the railroads to observe the old rules after the expiration of the Award. The prohibition in Section 1 against any change in the rules encompassed by the Section 6 notices is expressly subject to an exception for changes

made "by agreement, or pursuant to an arbitration award as hereinafter provided," and it is such changes which are now in issue. Furthermore, Section 8 of P.L. 88-108 provided that the "joint resolution shall expire one hundred and eighty days after the date of its enactment" on August 28, 1963. Hence, any obligation imposed upon the railroads by Section 1 to observe the old rules terminated on February 24, 1964, at the latest, except insofar as those rules were adopted or continued in effect by the Award or by agreement. In thus requiring the railroads to restore and observe the old rules for a limited period of 180 days only and subject to any changes made pursuant to the Award, the clear implication is that the Congress did not intend those rules to be restored once again some two years later after the expiration of the Award.

*B. The Legislative History Does Not Support the Unions' Contention.*

Although unable to find any statutory language upon which to ground their argument, the unions (Brief, at 14-21) do purport to find comfort in the legislative history of P.L. 88-108. When analyzed in more detail than that provided in the unions' brief, however, it will be seen that this reliance upon the legislative history is misplaced. Insofar as we are aware, no one ever suggested to the Congress while P.L. 88-108 was being considered that the old rules would be revived upon the expiration of the Award.

The unions rely in large measure upon statements attesting to the "interim" or "temporary" nature of the proposed legislation, but such statements do not themselves throw any light upon the issue as to what would occur after the expiration of the two-year period of the Award.<sup>6</sup> Under

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<sup>6</sup> This is also true, of course, with respect to the statement in *Engineers v. Chicago, R. I. & P. Co.*, 382 U.S. 423, 433 (1966), relied upon by the unions (Brief, at 20-21), that the "award was to be a complete and final



the railroads' view as under that of the unions, the legislation did not settle the matter permanently but only for a limited period. After the expiration of the Award, the crew-consist dispute may be reopened by the service of valid Section 6 notices and, if negotiations, mediation and possible emergency board consideration do not bring about an agreement, the parties again will be free to resort to self help.

The unions also rely upon some statements made during the committee hearings, primarily by Secretary of Labor Wirtz, to the effect that the rules to be promulgated by the Interstate Commerce Commission pursuant to the bill then under consideration would be "operative" only for an interim period and would no longer be effective at the end of that period. That indeed would have been the situation under the bill proposed by the Administration to which the committee hearings were devoted,<sup>7</sup> but even under that bill—which was rejected by the Congress—the old rules would not have been automatically restored at the end of the interim period. Rather, the carriers could have implemented their 1959 Section 6 notices to abolish the old rules and the unions could have struck, in the absence of an agreement or further legislation.

The Administration's bill provided for regulation by the

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disposition of these issues for a period not exceeding two years from the date the awards would take effect." The only issue decided in that case, insofar as P.L. 88-108 is concerned, is that state laws governing the manning of trains were not pre-empted by P.L. 88-108.

<sup>7</sup> The Administration's bill is set forth in the House Hearings, at 1-3, and in the Hearings on S.J. Res. 102 before the Senate Committee on Commerce, 88th Cong., 1st Sess. (hereinafter referred to as "Senate Hearings"), at 1-3. The comments by Senator Morse, quoted on pp. 19-20 of the unions' brief, also were based upon the Administration's bill, referring to rules approved by "the Commission." The comments by Representative Harris, quoted on page 20 of that brief, support the carriers' position when considered in the context of the fuller explanation to which he refers in those comments. See pp. 21-22, *infra*.



I.C.C. of all the issues raised by the 1959 and 1960 Section 6 notices, through interim rules that would "remain operative until the parties reach agreement regarding the matter involved, or if no agreement is reached, for two years following the date the interim rule goes into effect." The bill did not contain any provision for disposition of the Section 6 notices. Rather it provided for "continued collective bargaining" upon those notices and that, if no agreement was reached prior to the expiration of the I.C.C. rules, the President should report to the Congress "and make such further recommendations, if any, as he deems appropriate, including his recommendation as to whether this joint resolution should be extended." House Hearings, at 1-3.

We have set forth in Appendix B hereto further excerpts from the testimony by Secretary Wirtz in the committee hearings which demonstrate more fully the Administration's understanding of what the situation would be under its bill following the expiration of the rules to be promulgated by the I.C.C. Those comments confirm that the bill, if enacted, would not have affected the 1959 and 1960 Section 6 notices and that bargaining was to continue under those notices. While the Administration was optimistic about the possibility of an agreement disposing of the dispute created by the notices prior to the expiration of the period of I.C.C. regulation, if no agreement was reached and in the absence of further legislation the situation upon the expiration of that period would be the same as that existing at the time the bill was being considered—since the Section 6 notices would remain outstanding and the procedures of the Railway Labor Act had been exhausted, the carriers could implement their notices by abolishing the old rules and the unions could strike.

But, as the testimony by Secretary Wirtz further reveals, the Administration recognized that a nation-wide railroad strike would be as intolerable at the later time when I.C.C.

regulation ended as it was at the time the legislation was being considered. The bill thus provided for the President to report to the Congress and recommend what should be done, and Secretary Wirtz expected that an extension of the legislation for another interim period would be recommended. Indeed, a special session probably would have been called for that purpose if necessary. As a practical matter, consequently, the Administration contemplated a further legislative extension of the I.C.C. rules if the dispute was not settled by agreement.<sup>8</sup>

The only contrary interpretation of the Administration's bill was that of Max Malin, counsel for the Brotherhood of Locomotive Engineers, who thought that the I.C.C. rules would remain in effect after the two-year period but would then be subject to change under the Railway Labor Act. House Hearings, at 682. No one suggested that the old rules would be automatically reinstated and remain in effect until changed in accordance with the Railway Labor Act, as the unions now contend, either under the Administration's bill or under the bill enacted as P.L. 88-108.

*C. The Congress Integrated the Arbitration under P.L. 88-108 into the Railway Labor Act so that the Rules and Procedures Established by the Award Would Continue to Apply after the Expiration of the Award until Changed in Accordance with that Act.*

No one contends that the effect of the expiration of the Award, under P.L. 88-108, is comparable to the situation which the Administration understood would exist following

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<sup>8</sup> President Luna of the Brotherhood of Railroad Trainmen believed that any rules imposed by the I.C.C. would in effect become permanent. He testified that after the end of the two-year period "we would be back here with it" and "[w]e would be stuck with them unless we did settle for them" by agreement. House Hearings, at 904. See, also, testimony on behalf of the organizations by Messrs. Gilbert (*id.*, at 805, 821-822), Schoene (*id.*, at 989), Speirs (Senate Hearings, at 580), and Schoene (*id.*, at 623-624).

the expiration of the I.C.C. rules if its bill had been enacted and in the absence of an agreement or further legislation. That is, no one contends that the 1959 and 1960 Section 6 notices remain outstanding with the carriers free to implement their notices and the unions free to strike. The reason for this is clear. In substantially revising the Administration's bill, the Congress provided (P.L. 88-108, § 3) that the Award was to constitute a "complete and final disposition" of the fireman (helper) and crew-consist portions of those notices. Hence, unlike the situation which would have existed under the Administration's bill, those notices have been disposed of and are not available to provide a basis for a resort to self help by either the carriers or the unions.

The questioning of Secretary Wirtz and others by members of the congressional committees indicates that at least some of the members did not share the Administration's optimism about the chances of a voluntary agreement, that they did not relish the prospect of having the matter brought back to the Congress at a time when a strike once more would be imminent unless the Congress acted, and that they were concerned about the possibility that the "temporary" legislation might in effect become permanent by reason of numerous extensions.<sup>9</sup> As stated in S. Rept. No. 459, 88th Cong., 1st Sess., at 10:

"A failure to provide for a complete solution which would terminate the dispute at this time might well result in the necessity for a resumption of congressional activity in a few months' time. The committee

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<sup>9</sup> See e.g., the questions in the Senate Hearings by Senators Pastore (pp. 50, 660), Cotton (p. 55), Scott (p. 61) and Hartke (pp. 371, 412); and the questions in the House Hearings by Representatives Springer (pp. 55-56, 174), Rogers of Texas (pp. 59-60), Glenn (p. 64), Nelson (p. 65), Rogers of Florida (p. 69) and Broyhill (p. 559). See, also, the testimony in the Senate Hearings by Mr. Malin (p. 449) and Mr. Schoene (pp. 623-624), and the testimony in the House Hearings by Mr. Luna (p. 904) and Mr. Schoene (p. 989).

has sought to avoid this possibility, both because of its distaste for legislating solutions to labor-management disputes and because of the dangers of repeated congressional intervention in this field."

Although the Congress provided for the eventual expiration of P.L. 88-108 and the Award, as such, it did not intend to make the Award any less a "complete and final disposition" of the disputes that the Award resolved. Rather, as the Congress said in the Preamble to P.L. 88-108, it sought to achieve its ends "in a manner that preserves and prefers solutions reached through collective bargaining." Accordingly, it provided for expiration of the Award after two years so that the parties might then resume normal relations under the Railway Labor Act upon the basis of the work rules as modified by the Award. As Chairman Harris of the House Interstate and Foreign Commerce Committee explained (109 Cong. Rec. 15279):<sup>10</sup>

"[W]e have been trying to take a course that would bring these issues to final resolution where they could be settled. The resolution provides that on the two major issues, the order of the arbitration board would be in force for a period of 2 years. *Then the issues go back under the regular established procedure of collective bargaining.* (Emphasis added.)

Shortly thereafter, Chairman Harris reiterated that explanation, as follows (109 Cong. Rec. 15231):

"MR. FULTON of Pennsylvania. And at the end of a two-year period that these arbitration rulings have been in effect, what would happen then?

<sup>10</sup> The weight to which the explanation by Chairman Harris is entitled is indicated by the reliance placed upon his statements by the Supreme Court with regard to another aspect of P.L. 88-108. *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U.S. 423, 434-435 (1966).

"MR. HARRIS. *As I explained a moment ago, it goes back to the usual collective bargaining processes.*

"MR. FULTON of Pennsylvania. So then it is as if this resolution had never been passed at that time?

"MR. HARRIS. That is true." (Emphasis added.)

The "usual collective bargaining processes" are, of course, those provided by the "major" dispute provisions of the Railway Labor Act. See p. 23, *infra*. After the expiration of the two-year period of the Award, those processes may be invoked once again to seek changes in the existing fireman (helper) and crew-consist rules—i.e., the rules as modified by or pursuant to the Award—just "as if this resolution had never been passed. . . ." But, that could not be done prior to the expiration of the Award.

The Congress achieved its objective by integrating the arbitration into the Railway Labor Act. Section 4 of P.L. 88-108 provided that, to the extent possible, "the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, [and] the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act." Thus as is stated in S. Rept. No. 459, *supra* at 3, P.L. 88-108 "adopt[ed] the time-tested provisions of the Railway Labor Act" in effectuating the congressional purpose to insure a peaceful settlement of the work-rules dispute "by collective bargaining where possible and by arbitration where bargaining has not succeeded." Although the parties to the dispute had agreed in principle to arbitration of the fireman (helper) and crew-consist issues prior to the enactment of P.L. 88-108, they had "been unable to agree upon the terms and procedures of an arbitration agreement"<sup>11</sup> such as is required by Section 7

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<sup>11</sup> Preamble, P.L. 88-108. See, also, H. Rept. No. 459, *supra* at 3, 9; S. Rept. No. 713, *supra* at 3, 12-13.

First (45 U.S.C. § 157 First) of the Railway Labor Act. The Congress in effect thus supplanted the usual agreement to arbitrate. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & O. R. Co.*, *supra*, 225 F. Supp. at 18.

Under "the time-tested provisions of the Railway Labor Act," the expiration of the period in which an arbitration award is "in force" or the expiration of the term of a voluntary agreement, does not terminate the parties' obligation to comply with the rules prescribed by the award or agreement. That Act imposes upon the parties the duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier. . . ." 45 U.S.C. § 152 First. When the dispute involves "an intended change in agreements affecting rates of pay, rules, or working conditions," at least 30-days notice of the intended change must be given and a conference held thereon. 45 U.S.C. § 156. Thereafter, such "major" disputes are subject to mediation by the National Mediation Board (45 U.S.C. §§ 155, 156), a proffer of arbitration (45 U.S.C. §§ 155, 157, 158), and possible consideration by an emergency board (45 U.S.C. § 160). See, generally, *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 722-728 (1945). Until an agreement is reached or these procedures are exhausted, the existing "rates of pay, rules, or working conditions" which are in dispute must be maintained. *E.g.*, *Railway Clerks v. Florida E. C. R. Co.*, 384 U.S. 238, 244 (1966); *Locomotive Engineers v. B. & O. R. Co.*, *supra*.

These provisions of the Railway Labor Act respecting "major" disputes, therefore, plainly contemplate that "agreements affecting rates of pay, rules, or working conditions" in the industry shall be arrived at either through

voluntary settlement of disputes or by the award of an arbitration board pursuant to an agreement to arbitrate. When an arbitration award settles a dispute to which a Section 6 notice gives rise, it effects a change in and its terms become a part of the existing agreements between the parties—just as did the Award, in terms, in this case.<sup>12</sup> Subsequent changes in the “rates of pay, rules, or working conditions” provided for, either in a voluntary agreement or an arbitration award, can be brought about only by a further invocation of part or all of the same procedures, commencing with notices under Section 6, and do not result automatically from the expiration of the term of an agreement or award.

Thus, in *Manning v. American Airlines, Inc.*, 329 F. 2d 32 (2d Cir., 1964), an agreement establishing rules for the check-off of union dues provided that it was to “continue in full force and effect until April 30, 1963, and shall be subject to renewal thereafter only by mutual agreement of the parties hereto.” The Court held that the expiration of the term of the agreement, without renewal thereof, did not terminate the obligation of the carrier to continue to observe the check-off rule. In so holding, the Court stated (329 F. 2d, at 34) that:

“The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination. If the basic agreement of 1958 had no automatic renewal clause, § 6 would have nonetheless applied; unless the terms of the agreement were still to be followed there would be ‘an intended change’ which would bring into play the thirty-day notice provision of § 6 and with it the requirement of the second section that the *status quo* be maintained until compliance with all demands of the section was had.”

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<sup>12</sup> Section II-A(1) of the Award, for example, provides (J.A. 43) that: “All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.”



And, as the Court further stated (*ibid.*), "the very purpose of § 6 is to stabilize relations by artificially extending the lives of agreements for a limited period regardless of the parties' intentions."

To summarize, the Congress contemplated a relatively short period in which the parties could adjust to the new rules prescribed by the Arbitration Award without being subjected to pressures designed to bring about a change in those rules. During that two-year period of adjustment, the Award was to "continue in force" by its own terms, and the "regular established procedure of collective bargaining," including the service of Section 6 notices and the possibility of a resort to strikes or other self help once the procedures of the Railway Labor Act are exhausted, were in effect supplanted. But the Award was integrated into those procedures, which were to go back into effect upon the expiration of the Award. The Award made a "complete and final disposition" of the 1959 and 1960 Section 6 notices and modified the prior agreements, and such agreements as thus modified continue to apply after the expiration of the Award, although the parties may then resort once again to the procedures of the Railway Labor Act. Thus, the Congress accomplished what it set out to do: to provide a "complete and final disposition" of the original dispute growing out of the old rules, and then, after two years, to remit the parties to "the regular established procedure of collective bargaining" under the Railway Labor Act if changes in the work rules established by the Award should then be appropriate.

#### *D. The Unions' Contentions Would Lead to Absurd Results.*

As Judge Holtzoff noted (J.A. 162-163), "the construction urged by the labor organizations is unreasonable and would defeat the very purpose of the legislation and of the award." The Congress was fully familiar with the reports



by the Presidential Railroad Commission and the Emergency Board demonstrating the need for a revision of the old rules. See, *e.g.*, H. Rept. No. 713, *supra* at 2-3, 8-10; S. Rept. No. 459, *supra* at 4-5. We think it inconceivable that the Congress, knowing that the old rules had recently been condemned by two impartial government agencies, would nevertheless intend their restoration after only two years.<sup>13</sup> In choosing between such rules and those prescribed by an arbitration board dominated by impartial neutral members, with respect to the period between the expiration of the Award and the adoption of new rules by collective bargaining under the Railway Labor Act, the only rational choice that the Congress could make is the one it did make—the rules prescribed by or pursuant to the Award.

Moreover, the Congress provided for an arbitration award the provisions of which it knew would be utterly inconsistent with the automatic restoration of the old rules at the end of two years. It realized that the Award likely would result in the elimination of several thousand unneeded assignments—just how many is what the dispute really was all about.<sup>14</sup> And, the Congress expected Board 282 to include in its Award protections for existing employees

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<sup>13</sup> Indeed, the Congress had every reason to believe that many of the revisions in crew-consist rules would not take effect until at least a substantial part of the two-year period had elapsed. As we have related at pp. 7-8, *supra*, the special board procedure specified in the Award for changing crew-consist rules had been tentatively agreed upon by the parties, and the Board was required to give "due consideration" to such tentative agreements. At least 9 of the special board awards were not made until January of 1966, and some 31 were made during the second year of the Award (J.A. 62-65).

<sup>14</sup> "It is impossible for those who represent the brotherhoods to go back to their members with any great fruits of victory, because it is inevitable that jobs that are rendered needless and unnecessary because of automation and mechanization must go. And any other course is not consistent with the efficiency, competitive ability, and powers of this country and its free enterprise system." 109 Cong. Rec. 15057 (Remarks of Senator Cotton). See, *e.g.*, House Hearings, at 183, 804-805; Senate Hearings, at 367, 501, 663, 669-670.

which, in terms, would extend beyond two years. Such protections had been recommended by the Presidential Railroad Commission and the Emergency Board, and the parties had reached a substantial measure of tentative agreement in that regard. See pp. 3-8, *supra*. Thus, when the Congress provided in Section 3 of P.L. 88-108 that the Board should "incorporate" the parties' agreements into the Award and give "due consideration" to their "tentative agreements," it surely contemplated that such protective provisions almost certainly would be included in the Award. That the Congress specifically intended the inclusion of such provisions was made clear during the Senate debate. A proposal to amend the Joint Resolution to require the Board to incorporate such provisions in its Award was withdrawn by its sponsor when the Chairman of the Senate Commerce Committee explained that such a requirement was implicit in the provisions of the Senate bill. 109 Cong. Rec. 15122-15123; see H. Rept. No. 713, *supra* at 8, 9, 12, 23-24, 25-26.

Accordingly, the Board did just what the Congress expected when it authorized the elimination of unneeded positions, subject to comprehensive arrangements for the protection of incumbent employees. Insofar as crew-consist employees are concerned, they could not be eliminated except by natural attrition and existing assignments could not be eliminated, even though found to be unnecessary, until no longer needed to provide employment for the protected employees. This process of attrition naturally could be expected to require more than two years and the railroads as of the expiration of the Award had been able to discontinue only about half of the some 7500 assignments which they had been authorized to eliminate because of the necessity of providing assignments to protected employees. The number of firemen employed by the railroads has been reduced by about 18,000 under the Award, in part through the payment of over \$36,000,000 in separation allowances to

those employees with limited seniority which the railroads were authorized to separate from employment in that manner. Some 1200 firemen accepted comparable jobs, with relocation allowances and a *five-year* guarantee against a reduction in wages, and firemen with more than ten years seniority were assured of engine-service employment until they are retired, discharged for cause or otherwise removed from such employment by natural attrition. See pp. 8-9, *supra*.

It is absurd to suppose that the Congress intended to permit the railroads to eliminate thousands of unneeded positions, in part by the payment of millions of dollars in separation pay and relocation allowances and also by the transfer of trained personnel to other occupations, only to be required a few months later to hire new untrained men to fill the very same unnecessary positions. Indeed, obtaining so many new men on January 26, 1966, or some other specific date would be a practical impossibility. That the Congress did not intend such a result we think is plain from our discussion above.

## II

### **The Agreements and Special Board Awards Made Pursuant to Award 282 Continue to Apply After the Expiration of Award 282.**

Under Section III of the Award, the existing rules requiring a stipulated number of trainmen on crews in road and yard service were continued in effect until changed—either by agreement or by an award of a special board of adjustment—pursuant to procedures established by Section III. The parties entered into a stipulation (J.A. 62-70) setting forth the pertinent facts as to some 92 crew-consist agreements and 83 special board awards made pur-

suant to those procedures prior to the expiration of the Award. The unions concede (Brief, at 31) that 43 of those agreements, which provide in terms that they "shall continue in effect until changed in accordance with the provisions of the Railway Labor Act" (J.A. 65), continue to apply after the expiration of the Award. The controversy thus concerns the remaining crew-consist agreements and the special board awards.

We have demonstrated that the old rules were not automatically restored upon the expiration of the Award, and that the modifications in those rules made by or pursuant to the Award continue to apply until changed in accordance with the Railway Labor Act. The unions concede (Brief, at 31-33) that, if they are in error upon that basic issue, the court below correctly held that the following modifications in the existing crew-consist rules continue to apply after the expiration of the Award: (1) those made by 82 of the special board awards (J.A. 62-65); (2) those made by 20 agreements which provide that they "shall continue in effect to the same extent as if they were awards rendered by special boards of adjustment" (J.A. 65); (3) those made by three agreements which provide that they shall continue in effect unless the unions' contention that the old rules are automatically restored "is sustained" (J.A. 65-66); and (4) those made by 12 agreements "which do not contain any provision concerning the period during which the agreement shall continue in force" (J.A. 66).

The unions make additional arguments, which we discuss below, with respect to ten agreements described in Section F of the Stipulation as to Facts, to an agreement entered into by the Richmond, Fredericksburg & Potomac Railroad Co., and to a special board award obtained by the Green Bay & Western Railroad Company and the Kewanee, Green Bay & Western Railroad Company.

*A. Agreements Set Forth in Section F of the Stipulation as to Facts.*

In Section F of the Stipulation as to Facts (J.A. 66-70), the parties described a number of agreements "which either do not come within any of the categories listed above or the parties hereto have been unable to agree upon placing such an agreement in one of the categories listed above" (J.A. 66). As found by Judge Holtzoff (J.A. 169), these agreements "are expressly made dependent, in one way or another, in their duration, on the effective period of" Award 282. The agreement entered into by the Texas Mexican Railway Company, for example, provided (J.A. 68) that it "will continue in effect in accordance with Section IV 'Duration' of Award of Arbitration Board No. 282." <sup>15</sup>

The unions contend (Brief, at 33) that such provisions "show that the parties intended that at the termination of these agreements the crew-consist rules in effect prior thereto were to be automatically in effect." But the agreements do not contain any language providing for the automatic restoration of the old rules upon their expiration, and with two exceptions, discussed below, the unions do not contend otherwise.<sup>16</sup> In essence, the situation with respect

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<sup>15</sup> The agreements entered into by the Denver and Rio Grande Western (J.A. 67) and the Toledo, Peoria & Western railroads (J.A. 68-69) differ mainly in that they expressly note that, under Section IV of the Award, the crew-consist provisions of the Award expire on January 25, 1966. The agreements entered into by the Illinois Terminal Railroad Co. (J.A. 67) and by the Union Pacific (two agreements—J.A. 69) similarly provide that they "will continue in effect only for the duration of the Award of Arbitration Board No. 282." The pertinent provisions of the remaining four agreements, which also are of similar import, are quoted and discussed at pp. 31-33, *infra*.

<sup>16</sup> That the unions knew how to provide for restoration of the old rules upon the termination of the Award or an agreement thereunder is demonstrated by the fact that three crew-consist agreements did expressly so provide. The ruling by Judge Holtzoff that the old rules were restored upon the expiration of the term of those agreements, as provided therein, has not been appealed. See J.A. 172, 178.

to these agreements does not differ from that respecting the Award itself and the special board awards made under Award 282. As found by Judge Holtzoff, "[i]t is clear that all of these agreements were adjusted to the duration of the effective period of Award 282, they were made in contemplation of that Award, and the reasonable construction of these agreements . . . is that they have the same effect as awards of the Special Boards of Adjustment created under the Award" (J.A. 170). The fact that the parties expressly incorporated Section IV of the Award into crew-consist agreements under the Award adds nothing to the force of the unions' arguments concerning the effect of the expiration of the Award—arguments, which as demonstrated in Part I of this Argument, are erroneous.

Indeed, the decision in *Manning v. American Airlines, Inc.*, *supra*, is directly in point as to the effect of the expiration of the term of these agreements. As is pointed out at pp. 28-29 above, the agreement involved in that case contained a specific termination date, but the Court held that the carrier must continue to observe the check-off rule established by that agreement after the termination date until changed in accordance with the Railway Labor Act. In so doing, the Court noted that "the very purpose of §6 [of the Railway Labor Act] is to stabilize relations by artificially extending the lives of agreements for a limited period regardless of the parties' intentions." 329 F.2d, at 34.

The unions contend (Brief, at 36-38) that the agreement entered into by the Kansas City Southern and the Louisiana & Arkansas railroads and the agreement entered into by the Wichita Terminal Association expressly provide for restoration of the old rules upon the expiration of the Award. But while the first such agreement provides that it "does not affect schedule rules, agreements (and practices with respect to consist of crews), in effect on the day

preceding the effective date of this agreement" except as modified by the agreement and the Award, for the period thereof, it also provides that the "agreement . . . shall remain in effect until January 25, 1966, unless the parties agree otherwise, in accordance with Article IV, Duration of Award of Arbitration Board 282" (J.A. 68). Hence, the parties expressly tied the duration of the Agreement into the duration of the Award, and the situation after January 25, 1966 was made dependent upon the resolution of the basic issue between the parties as to the effect of the expiration of the two-year period of the Award. If the rules established by or pursuant to the Award continue to apply after the expiration thereof on January 25, 1966, as we contend in Part I of this Argument, the parties clearly contemplated that that also would be true with respect to the modifications in the prior rules made by this agreement pursuant to the Award.

This is even more clearly the case with respect to the agreement entered into by the Wichita Terminal Association. After providing for modification of the existing rules during the term of the agreement, it went on to provide (J.A. 69-70):<sup>17</sup>

"This agreement shall . . . remain in effect until January 25, 1966, as provided in Section IV, Duration of Arbitration Award No. 282. In this connection the parties hereto recognize that this Carrier and the Brotherhood of Railroad Trainmen are parties to Award of Arbitration Board No. 282 and will be subject to whatever disposition is made of the Crew Consist issue nationally at the expiration of Award No. 282."

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<sup>17</sup> The agreements entered into by the Alton and Southern Railroad (J.A. 66-67) and by the East St. Louis Junction R. Co. (J.A. 67) contain identical provisions, but do not contain any language which even arguably provides for restoration of the old rules after the expiration of the Award.



Thus, this agreement spelled out what is implicit in the agreement discussed immediately above: not that the old rules would be restored upon expiration of the Award, but rather than the parties "will be subject to whatever disposition is made of the Crew Consist issue nationally at the expiration of Award No. 282." And that "disposition" is, as we contend, that the rules prescribed by or pursuant to the Award continue to apply until changed in accordance with the Railway Labor Act.

*B. Agreement Entered into by the Richmond, Fredericksburg & Potomac Railroad Co.*

After the Richmond, Fredericksburg & Potomac Railroad Co. served a notice of proposed changes in crew-consist rules pursuant to Section III of the Award (J.A. 80-81), the union replied (J.A. 81-82) that "we have consummated an agreement in accordance with [the said notice] for the duration of Award 282." The carrier noted, in response (J.A. 83-85), that any agreement would "have the same force and effect as an award of a special board of adjustment" under Award 282. The Union then wrote (J.A. 86-87) that: "We now have an agreement in accordance with your notice served upon us on October 9, 1964 and I expect it to be put in effect November 15, 1964." The Carrier thereupon (J.A. 88) acknowledged "that an agreement has been reached" which "takes the place of a Special Board Award entered under the provisions of the Award of Arbitration Board 282," and noted that the "duration of the agreement will be the same as any other agreement made by the parties in collective bargaining which does not include a specific termination date." Whereupon the union's General Chairman replied (J.A. 89-90) that the "effective date of this agreement forced upon us is November 15, 1964, and as far as I am concerned, it expires January 25, 1966 unless we agree otherwise in



accordance with Article IV, Duration of Award of Arbitration Board No. 282. . . ." The correspondence closed with a letter from the railroad (J.A. 90) stating that: "On November 15, 1964, that agreement will be placed in effect with the understanding that there is a difference between the parties on the duration of that agreement."

Thus, the parties made a crew-consist agreement pursuant to Section III of the Award which was put into effect on November 15, 1964, but differed as to the status of that agreement after the expiration of the Award.<sup>18</sup> That difference between the parties to the agreement, of course, is the same difference which forms the basic issue in this law suit. For the reasons stated in Part I of this Argument, it should be resolved by holding that the rules prescribed by or pursuant to the Award continue to apply after the expiration of the Award until changed in accordance with the Railway Labor Act.

*C. Special Board Award Obtained by the Green Bay & Western Railroad Co. and the Kewanee, Green Bay & Western Railroad Co. on January 25, 1966.*

The unions contend (Brief, at 28-30) that the Award expired on January 24, 1966, and that one of the special board awards—obtained by the Green Bay and Western Railroad Co. and the Kewanee, Green Bay & Western Railroad Co.—is invalid because it was executed on January 25, 1966.

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<sup>18</sup> The unions suggest (Brief, at 39) that it "is doubtful that there was any agreement at all," although they do not make such a contention outright. We believe that the correspondence between the parties, summarized above, demonstrates conclusively that there was an agreement. So, too, the parties stipulated (J.A. 70) that "the BRT agreed that the Richmond, Fredericksburg & Potomac could make certain changes in crew consist, pursuant to Section III of the Award. . . ." We believe the unions also will concede that that agreement was put into effect on November 15, 1964, as provided in the correspondence, that the agreement has been applied ever since, and that the union concerned has never denied the right of the carrier to implement the agreement prior to the expiration of the Award.

We show, at pp. 37-42, *infra*, that crew-consist proceedings initiated under the Award prior to its expiration may validly be completed after expiration of the Award. But even if we are wrong about that, the unions, as well as the carriers, have consistently recognized that the Award did not expire until the end of January 25, 1966, and any contention to the contrary has been waived.

Even before suit was brought, the Brotherhood of Railroad Trainmen (which is the union party to the special board award in question) gave "formal notice of our demand that the Carrier, immediately *upon the expiration of the Award of Arbitration Board 282 at 12:01 AM, January 26, 1966*" reinstate the old rules (J.A. 141, 143-144; emphasis added). In paragraph 19 of the Complaint, the carriers alleged, among other things, that (J.A. 9) "the Award ceases to continue in force as an award . . . after January 25, 1966." In paragraph 19 of their Answer and Counterclaim, the unions "admit that the Award of Arbitration Board No. 282 ceased to exist after January 25, 1966" (J.A. 22).

Throughout the proceedings in the court below the parties continued to act upon the basis that January 25, 1966 was the last day of the two-year period of the Award. Thus, they included the special board award in question in Section A of the Stipulation as to Facts (J.A. 62-65), which listed the special board awards made during the period of the Award, rather than in Section I (J.A. 70-75) which set forth detailed facts about the special board proceedings initiated but not completed during the period of the Award. When argument was held upon the application of the basic legal principles declared in the District Court's opinion of March 3, 1966 to the special board awards and agreements set forth in the Stipulation as to Facts, counsel for the unions acknowledged (J.A. 150) that "[y]ou have held against us" on "our position . . . that those

changes effectuated by the awards of the Special Boards expired on January 25, 1966, and that the old rules then automatically came back." That concession was made with respect to the "first category . . . listed in the stipulation" (J.A. 150)—Section A—without any suggestion that the award obtained by the Green Bay & Western and the Kewanee, Green Bay & Western stood in a different position from that occupied by the others. Accordingly, Judge Holtzoff ruled in his oral opinion (J.A. 168) that "the effective period of Award 282 . . . terminated so far as the defendants in this action are concerned on January 25th, 1966," and that all of the special board awards listed in Section A of the Stipulation, having been made on or before that date, created a status which continued after the expiration of the Award.

The unions *first* raised the contention that the Award expired on January 24, 1966, rather than January 25, 1966, and thus that the special board award in question is invalid, during the arguments upon the form of the order to be entered in accordance with the rulings made by Judge Holtzoff in his written opinion of March 3, 1966 and his oral opinion of March 28, 1966. See J.A. 150-151. Since, as Judge Holtzoff stated in rejecting this contention, "[w]e have always referred in all the discussions to the 25th of January as being the expiration date," and that was "the date always used" by everyone concerned until after he had made his rulings based thereon (J.A. 151), he was more than justified in refusing to consider such a belated argument. Even if the crew-consist provisions of the Award otherwise would have expired on January 24, 1966, the common understanding by the unions and the carriers that this would not occur until the end of January 25, 1966, would constitute an extension of the period of the award for an additional day by agreement, as is expressly permitted by P.L. 88-108 and the Award.

## III

**The Procedures Established by the Award May Be Invoked After Expiration of the Award or, at Least, May Be Completed if Initiated Prior to the Expiration of the Award.**

While holding that the crew-consist agreements and special board awards made pursuant to the procedures prescribed in Section III of the Award continue to apply after expiration of the Award until changed in accordance with the Railway Labor Act, the court below also ruled (J.A. 163, 172-173, 176) that the procedures themselves could no longer be utilized after the expiration of the Award and that proceedings which had been initiated but not completed thereunder could not validly be completed after expiration of the Award. The carriers believe that the District Court erred in so ruling, and have cross-appealed from the judgment entered below for that reason.

*A. The Procedures Established by the Award Continue.*

Parts A, B and C of Section III provide for written notice of proposed changes in crew-consist, conferences thereon and submission of the dispute to a special board of adjustment for final decision pursuant to guidelines specified in the Award if no agreement is reached. Part D of Section III prescribes the protections to be afforded to existing crew-consist employees. Whatever may be the effect of the expiration of the Award, there is no suggestion in P.L. 88-108, in its legislative history, in the Award or in any judicial decisions of a basis for making a distinction between the various parts of the Award. We see no reason why the protective provisions in Part D should continue, as was held below, but not the procedural provisions in Parts A through C of Section III.

If the parties had established those procedures by a voluntary agreement, as they had tentatively agreed to do (see pp. 7-8, *supra*), plainly the procedures thus established would have continued after the expiration of the term of the agreement until changed in accordance with the Railway Labor Act. See pp. 22-25, *supra*. *Manning v. American Airlines, Inc.*, *supra*, so held with respect to check-off procedures established by a voluntary agreement. The fact that the crew-consist procedures were embodied in Award 282, pursuant to the direction of the Congress that the Arbitration Board give "due consideration" to the tentative agreements of the parties in making its Award, should not make any difference in this regard.

*B. In any Event, the Procedures May Be Completed If Initiated Prior to Expiration of the Award.*

If the procedures established by Section III of the Award continue to apply, as argued above, proceedings initiated under those procedures prior to the expiration of the Award naturally may be completed after the expiration of the Award. But however that may be, we believe that the Congress could not have intended to invalidate such proceedings merely because they were not completed prior to the expiration of the Award.

There is no way in which a carrier (or union) could determine with any certainty the time which would be required in order to complete the crew-consist procedures established by the Award. The Award did not limit the time in which a notice of proposed change in crew consist could be served thereunder (J.A. 51-52). Although the parties must begin their conferences within 15 days after service of such a notice, there is no fixed limit upon the duration of the conferences (J.A. 51-52). If no agreement is reached in the conferences, a party may refer the dispute to a special board of adjustment; in such circumstances, each party has

10 days in which to name a member to the special board, the two partisan members so named have 10 days in which to select a neutral member and, if they cannot agree upon the neutral, the National Mediation Board has five days after being requested to do so in which to name the neutral (J.A. 52-53). The special board of adjustment may take up to "60 days after the appointment of the neutral member" in which to render its award (J.A. 53), and that period may be extended by agreement of the parties or by a court in the light of the fact that the "Award contemplates that substantial adherence to its objectives should outweigh literal compliance with the time limits" (J.A. 58). If it becomes necessary to replace the neutral member, the "sixty day time limit begins to run again with the date of this second appointment" (J.A. 58-59). Even if a crew-consist agreement or special board award is made, a second proceeding may be initiated by the same carrier or union with respect to assignments not involved in the first proceedings or as to the same assignments with respect to which a material change in conditions has occurred (J.A. 57, 60-61).

The unreasonable and harsh consequences of a ruling that crew-consist proceedings must be completed prior to the expiration of the Award or nullified entirely is well illustrated by the four specific situations which are before the Court. The Lake Superior Terminal & Transfer Railway Co., for example, served notice of proposed changes in crew consist on October 1, 1965; conferences were held on the notice, the dispute was referred to a special board of adjustment, hearings were held by the special board and the neutral member proposed an award—all prior to January 25, 1966; an award was not issued prior to the expiration of the Award *only* because neither the carrier member nor the union member could agree with the neutral's proposal, and a majority was not obtained for any proposal, so that the carrier was forced to request the Mediation Board to appoint another neutral. J.A. 72-73.

The St. Louis Southwestern Railway Co. served a notice of proposed changes in crew consist on September 30, 1965; the invocation of a special board of adjustment was delayed until late December of 1965 in view of efforts by the union (which were unsuccessful) to have both Board 282 and the court below declare the notice to be invalid; the neutral member of the special board, consequently, was not named by the Mediation Board until January 19, 1966; and the neutral did not schedule hearings to commence until February 15, 1966. J.A. 73-75.<sup>19</sup> The Chicago and North Western Railway Co. served a notice of proposed changes in crew consist on September 13, 1965, but did not obtain the appointment of a neutral member until January 18, 1966; by agreement of the parties, the first meeting of the special board was not held until February 1, 1966; and the special board issued its award on March 11, 1966. J.A. 70-71.

In the remaining situation, the Great Northern Railway Co. served a notice of proposed changes in crew consist on December 9, 1965, and referred the dispute to a special board on December 23, 1965; the neutral member was named on January 14, 1966, and scheduled hearings to commence on January 19, 1966, so that the board could complete its proceedings prior to expiration of the award; the union requested a postponement until January 24th so that its member could attend a convention, stating that while it was the union's view that the special board awards had no effect after the expiration of the Award regardless of when rendered, the law otherwise allowed the board 60 days after appointment of the neutral in which to render its award even if he were appointed on January 25, 1966; and the

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<sup>19</sup> The parties have stipulated to postpone the proceedings of the special board, and to stay the running of the 60-day period in which it may issue its award, until after a final decision in this case. See J.A. 96-97.



hearings thereupon were postponed until January 24, 1966, without prejudice to the position of either party. J.A. 71-72, 91-96.<sup>20</sup>

In short, the failure of the carriers concerned to obtain special board awards prior to the expiration of the Award was due to unforeseeable delays and other circumstances which were not the fault of the carriers. We do not believe that the Congress intended to deprive the carriers of the opportunity to obtain changes in their crew-consist rules in such circumstances. In holding to the contrary, the court below relied exclusively upon an assumed analogy to the principle that a court is ousted of jurisdiction over a case if the statute conferring jurisdiction is repealed while the case is pending in the absence of a savings clause for pending cases (J.A. 172-173). The unions (Brief, pp. 27-28) also are content to rely solely upon the applicability of that principle. We submit, however, that the situation in which that principle has been applied is not truly analogous to the situation before the Court. The Award has not been repealed in a manner demonstrating that the Congress intended to terminate all proceedings thereunder including those already pending. We are here concerned, rather, with the intent of the Congress in limiting to two years the period in which the Award "shall continue in force. . . ." For the reasons stated herein, we believe that the Congress intended all parts of the Award to modify the existing agreements and thus to continue to apply after the expiration of that two-year period until changed in accordance with the Railway Labor Act. But even if the procedural aspects of the Award terminated upon the expiration of that period, the

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<sup>20</sup> We note that the special board issued its award on April 29, 1966—which was too late to be included in the record below.



only reasonable interpretation is that the Congress intended to permit pending proceedings thereunder to be completed.

#### IV

#### **The Agreement Entered Into by Certain Members of the Southern Railway System Continues to Apply.**

The Southern Railway Company and seven of its subsidiaries were held not to be subject to the crew-consist provisions of the Award since the Section 6 notices served by or upon those carriers in 1959 and 1960, insofar as they related to crew-consist, had been withdrawn prior to the enactment of P.L. 88-108 (J.A. 76-77, 179). They entered into an agreement (J.A. 98-103) with the Brotherhood of Railroad Trainmen, however, which provided for certain changes in crew-consist, adopted the "protective" provisions of Section III of the Award with minor modifications, and provided (J.A. 103) that:

"This agreement . . . shall continue in effect until January 25, 1966, *and thereafter* to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III . . . of the Award of Arbitration Board No. 282." (Emphasis added.)

The unions contend (Brief, at 39-41) that this agreement, by its express terms, terminated on January 25, 1966, even if the agreements and special board awards made pursuant to the Award continue to apply after the expiration of the Award. This contention is adequately refuted, of course, by the language of the agreement quoted above which provides that the agreement shall continue in effect not only "until January 25, 1966," but also "thereafter" as if it were an award of a special board of adjustment made under the Award. And, of course, even if a termina-

tion date of January 25, 1966 had been provided, the modifications in the crew-consist rules would continue to apply until changed in accordance with the Railway Labor Act for the reasons stated at pp. 19-25, *supra*.

## V

### **Carriers Subject to P.L. 88-108 and the Award.**

The unions contend (Brief, at 42-45) that the court below erred in holding that the Tennessee, Alabama & Georgia Railway Co. and the Terminal Railway, Alabama State Docks were subject to P.L. 88-108 and the crew-consist provisions of the Award. Although those carriers did not serve the Section 6 notices of November 2, 1959, they were served by the union representing their crew-consist employees with its Section 6 notice of September 7, 1960, in common with most of the other railroads in the country. The two carriers individually agreed with the union to hold the matter in abeyance pending national handling of the dispute, and thus did not directly participate in the proceedings before Emergency Board No. 154 or Arbitration Board No. 282, but were subject to the Section 6 notice of September 7, 1960 throughout that period. J.A. 77-78. After the Award became effective, each of the carriers entered into a crew-consist agreement with the union, which agreement was expressly stated therein to have been made "[i]n accordance with the provisions of the Award of Arbitration Board 282" (J.A. 105) or "[p]ursuant to Article III of Award of Arbitration Board No. 282" (J.A. 106).

At the time it entered into the aforementioned agreements, therefore, the union expressly agreed that it did so pursuant to the crew-consist provisions of the Award and thus recognized that the railroad party to the agreement was subject to P.L. 88-108 and the Award. By so doing, the union and its members obtained the benefit of the

"protective" provisions of the Award which were not included in the agreements but applied directly by virtue of the Award. We submit that the union, in view of these circumstances, is estopped from contending at this late date that the two carriers are not subject to P.L. 88-108 and the Award. In any event, the ruling below plainly is correct.

The jurisdiction of Board 282 was established by Section 3 of P.L. 88-108, which directed the Board to "make a decision . . . as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959 . . . and that portion of the organizations' notices of September 7, 1960" raising the fireman (helper) and crew-consist issues. Thus, the Congress did not make any distinction among the various carriers turning upon the status or nature of the negotiations and mediation growing out of the Section 6 notices, but made the Board's jurisdiction depend solely upon whether the particular railroad had either served the carriers' notice on or about November 2, 1959 or received the unions' notice on or about September 7, 1960. Accordingly, Section 1 provided that "*no* carrier which served the notices of November 2, 1959, and *no* labor organization which received such notices *or* served the labor organization notices of September 7, 1960" (emphasis added) could act to bring about a change in the prior rules except by agreement or pursuant to the Award. In stating that the Florida East Coast Railroad Co., which had withdrawn from national handling of the dispute,<sup>21</sup> would be covered, Representa-

<sup>21</sup> See *Florida E.C. Ry. Co. v. Brotherhood of Railroad Trainmen*, 336 F.2d 172, 176 (5th Cir., 1964). That railroad has since been held to be subject to P.L. 88-108 and the Award. *United States v. Florida E.C. Ry. Co.*, 49 Lab. Cas. ¶ 18,947 (M.D. Fla., 1964). While not finding it necessary to decide, this Court indicated in *dicta* that the Southern Railway Company, which also withdrew from national handling, could be subjected to the fireman (helper) provisions of the Award. *Southern Ry. Co. v. Brotherhood of Locomotive Firemen, Etc.*, 119 U.S. App. D.C. 91, 337

tive Harris explained (109 Cong. Rec. 15281) that "the committee did not feel we could start making exceptions here, there and yonder. If so, then we would be in difficulty in trying to arrive at some logical solution to the problem."

Whether or not these two small railroads would have been struck if P.L. 88-108 had not been enacted is not disclosed in the record and could hardly be determined at this late date. But, the Congress obviously was not concerned with such imponderables. Even if there had been time and some means for developing such distinctions, a few isolated railroads hardly could operate normally if most of the railroads were shut down. Hence, it was entirely reasonable for the Congress to make the statute and the Award applicable to all carriers which either served the 1959 notice or received the 1960 notice and as to which the dispute thus created remained unsettled.<sup>22</sup>

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F. 2d 127, 134-135 (1964). Unlike the crew-consist situation relating to these unions, the September 7, 1960 notice served on the Southern was not withdrawn as to the fireman (helper) issue. In the companion case below, Judge Holtzoff ruled that the Southern was subject to the fireman (helper) provisions of the Award, and that ruling has not been attacked by the BLF&E in its brief on appeal.

<sup>22</sup> *Division 700, Bro. of Loc. Eng. v. National Ry. Lab. Arb. No. 282*, 224 F. Supp. 366 (D. D.C., 1963), is not to the contrary. In that case, the carrier had withdrawn the 1959 notice and had not been served with the 1960 notice, so that the dispute created by those notices did not exist insofar as that railroad was concerned when P.L. 88-108 was enacted. Judge Holtzoff there stated in *dicta* (*id.*, at 368) the substance of his ruling below (see J.A. 171), commenting that "[w]hat is obviously meant by the statute is that the notices of November 2, 1959, or the notices of September 7, 1960, should have been outstanding throughout the period of mediation in order that the compulsory arbitration proceeding should attach to the specific parties." In *Mississippi Export Railroad Co. v. Brotherhood of Locomotive Firemen & Enginemen*, No. CA 3103 (S) (S.D. Miss., 1965), appeal pending, No. 23329 (5th Cir.), the District Court held that the statute and Award applied to the carrier in circumstances almost identical to those involved here, apart from the fact that that carrier served the November 2, 1959 notice (on November 17, 1959) as well as being served with the organizations' notice of September 7, 1960.

We note that the crew-consist agreement entered into by the Terminal Railway, Alabama State Docks, by its own terms (J.A. 106-107) remains in effect "until changed in accordance with the provisions of the Railway Labor Act," and the unions do not contend otherwise (see Brief, at 31, 43). The agreement entered into by the Tennessee, Alabama & Georgia Railway Co. provides (J.A. 106) that the crew-consist provisions "shall continue in effect to the same extent as if it were an award" of a special board of adjustment. While we think it clear that the agreement would continue in effect until changed in accordance with the Railway Labor Act if that provision stood alone, see p. 29, *supra*, the parties went on to spell out that consequence by also providing that the "agreement . . . shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act" (J.A. 106). Hence, the principal effect of a holding that the two railroads are not subject to P.L. 88-108 and the Award would be to deprive their employees of the benefit of the "protective" provisions of the Award.

## VI

### **Section 6 Notices Served During the Period of the Award Were Premature.**

At various times between January 25, 1964 and January 25, 1966, the Brotherhood of Railroad Trainmen served some 85 of the carriers with notices of proposed changes in crew-consist rules substantially identical to the changes proposed in the September 7, 1960 Section 6 notices which gave rise, together with the carriers' notices of November 2, 1959, to the dispute disposed of by the Award. The new notices were not served pursuant to the procedures established in Section III of the Award for changing crew-consist rules, but rather purported to be served pursuant

to Section 6 of the Railway Labor Act. Most of the carriers receiving such notices served notice of counterproposals in late December of 1965, "without waiving the Carrier's position as to the prematurity and impropriety" of proceeding under the Railway Labor Act prior to the expiration of the Award (J.A. 107), so that such counterproposals would be available for consideration with the union's proposals if the latter were held to be proper, and a few other carriers also served notice of the same counterproposals so that they could participate in national handling of the issue. See p. 9, *supra*. The court below held all of the Section 6 notices thus served prior to the expiration of the Award to be premature, and further held that they did not become effective under the Railway Labor Act until the day after the expiration of the Award.

We have demonstrated, from its language and legislative history, that P.L. 88-108 in effect supplanted the "major" dispute provisions of the Railway Labor Act during the two-year period of the Award with respect to matters covered by the Award. The principal purpose and effect of the two-year limit is to subject the parties once again to those provisions of the Railway Labor Act for collective bargaining upon proposed changes in the rules as modified by or pursuant to the Award, which modifications continue to apply until changed in accordance with the Act. See pp. 19-25, *supra*. As was explained by Representative Harris, upon the expiration of the two-year period of the Award, "the issues go back under the regular established procedure of collective bargaining" (109 Cong. Rec. 15279).

Among other things, the Congress thus sought to avoid the possibility, inherent in the rejected bill proposed by the Administration, of being faced with the threat of a railroad strike and a consequent demand for new legislation immediately upon termination of the two-year

period of interim I.C.C. regulation proposed in the Administration's bill. See pp. 17-21, *supra*. That purpose would have been frustrated if the parties could serve new Section 6 notices and exhaust the procedures of the Railway Labor Act during the period of the Award, as contended by the unions.

Moreover, the Congress recognized that "the positions on both sides have unfortunately hardened" during the dispute "of extremely long standing" with a consequent breakdown in the effectiveness of the Railway Labor Act procedures. S. Rept. No. 459, *supra* at 8-9. By assuring that any future Section 6 proposals would be reasonably related to the findings of the arbitration board and the experience under the Award, the Congress hoped to move the parties from their "hardened" positions so that when normal collective bargaining resumed after the expiration of the Award it could reasonably be expected to be successful rather than lead to the same impasse that necessitated the enactment of P.L. 88-108. Accordingly, Section II-E of the Award (J.A. 50-51) established "a National Joint Board . . . with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period this award remains in effect" and to issue a "report based upon its study" within three months of the expiration of the Award. So, too, Section III of the Award (J.A. 51-55) established its own procedure for making changes in rules requiring a stipulated number of trainmen by the application of guidelines specified therein. If the parties could be required to bargain under the Railway Labor Act about proposed changes in firemen (helper) or crew-consist rules before the report of the National Joint Board was available and before the old crew-consist rules had even been changed under the procedures established by the Award, as would



have been possible if the union's argument is correct, the salutary purpose of the Congress to bring about a departure from the "hardened" positions which had developed also could have been easily frustrated.

The unions (Brief, at 47-49) rely primarily upon legislative history reflecting the fact that, under the Administration's bill, the 1959 and 1960 Section 6 notices would have remained outstanding during the interim period of I.C.C. regulation. That bill provided among other things, that the I.C.C. rules would "be operative only . . . until the current controversy . . . is resolved by the parties through continued collective bargaining; and no provision in this joint resolution shall be construed as limiting the right and responsibility of the carriers and organizations to reach agreement" disposing of the controversy. House Hearings, at 1. Public Law 88-108 does not contain a comparable provision, however, and the Congress provided therein for a "complete and final disposition" of the 1959 and 1960 Section 6 notices as they related to the fireman (helper) and crew-consist issues. See pp. 19-20, *supra*. The legislative history relied upon by the unions, consequently, is not directed to the issue before the Court under the legislation which was enacted.

We do not contend, of course, that the railroads and unions were prohibited from engaging in voluntary efforts during the period of the Award to reach some agreement about fireman (helper) and crew-consist rules. Indeed, by voluntary agreement they could have displaced the Award either in part or altogether at any time. See H. Rept. No. 713, *supra* at 13. But while the parties could engage in collective bargaining on a voluntary basis, they could not during the period of the Award be subjected to the "major" dispute procedures of the Railway Labor Act so as to be forced to negotiate under the threat of an ultimate resort to a strike or other self help in the event those procedures



were exhausted without an agreement being reached. We submit, therefore, that the court below correctly held that the Section 6 notices served during the period of the Award were premature and did not become effective under the Railway Labor Act until the day after the expiration of the Award.<sup>23</sup>

The unions suggest (Brief, at 51-53) that the ruling as to the prematurity of the Section 6 notices at least should not apply to the notices served during the period of the Award upon the Southern Railway Company and those of its subsidiaries which were not subject to the crew-consist provisions of the Award. But while not directly subject thereto, those railroads entered into an agreement with the Brotherhood of Railroad Trainmen which modified the existing crew-consist rules, provided protections to the affected employees comparable to the protections provided by Section III-D of the Award, and expressly continues in effect "to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III . . . of the Award of Arbitration Board No. 282." See pp. 42-43, *supra*. Having entered into an agreement that is the equivalent of an award by a special board of adjustment pursuant to Section III of the Award and which affords to its members protective provisions comparable to those provided by the Award, the Brotherhood is in no position to contend that it is entitled to proceed under the Railway Labor Act to change that agreement prior to the expiration of the Award any more than it could so proceed prior to the expiration of the Award in an effort to change a special board award.<sup>24</sup>

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<sup>23</sup> We believe the court below technically would have been more correct if it had held that the Section 6 notices could not be served until after the expiration of the Award, but we have no fundamental quarrel with the view of Judge Holtzoff (J.A. 165) that "[i]t would be a futile gesture . . . to require the parties to serve new notices."

<sup>24</sup> This is also true with respect to the Tennessee, Alabama & Georgia Railway Co. and the Terminal Railway, Alabama State Docks, if the Court

## VII

**The Norris-LaGuardia Issue Is Moot.**

While a temporary restraining order prohibiting a strike by these unions was entered and extended by consent until March 29, 1966, that order expired prior to the entry of the judgment below. Consequently, any issue as to the propriety of the temporary restraining order, under the Norris-LaGuardia Act or otherwise, is moot. *Benitez v. Anciani*, 127 F.2d 121, 125 (1st Cir., 1942); *Southard & Co. v. Salinger*, 117 F.2d 194, 196 (7th Cir., 1941). No other injunctive relief was granted, so that the applicability of the Norris-LaGuardia Act in the event that such relief had been or may hereafter be granted is an abstract question of law which this Court should not decide in this case. Cf., *Spreckels Sugar Co. v. Wickard*, 75 U.S. App. D.C. 44, 131 F.2d 12, 14-15 (1941).

A permanent injunction was entered against the Brotherhood of Locomotive Firemen and Enginemen in a companion case below, and this Court has directed that the appeals in that case be heard by the same panel at the same session as the appeals herein. The Norris-LaGuardia issue is properly before this Court upon the appeal by the BFL&E, and we have briefed the issue fully in that case. If the Court should conclude that the issue is properly before it in this case, we submit that the Norris-LaGuardia Act should be held to be inapplicable for the reasons stated in that brief—copies of which have been furnished to counsel for the unions in this case.

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should hold that they were not directly subject to the Award. See pp. 43-46, *supra*. Having expressly stated that its crew-consist agreements with those carriers were made pursuant to the Award, the union must be held to have joined in the adoption of the Award with respect to those railroads even if they were not directly subject thereto, and thus to have subjected itself to all of the consequences of the Award except to the extent that the agreements provide otherwise.

**Conclusion**

For the foregoing reasons, the judgment below should be affirmed except insofar as it determines that the crew-consist procedures established by the Award cannot be initiated or completed after the expiration of the Award.

Respectfully submitted,

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## APPENDIX A

*Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C.  
§ 151 et seq.)*

*Section 2, 45 U.S.C. § 152:*

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

. . . . .

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

. . . . .

*Section 5, 45 U.S.C. § 155:*

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

•        •        •        •        •

*Section 6, 45 U.S.C. § 156:*

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay,

rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

*Section 7, 45 U.S.C. § 157:*

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, as the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representatives as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation



Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to



a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

*Section 8, 45 U.S.C. §158:*

The agreement to arbitrate—

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this Act;
- (c) Shall state whether the board of arbitration is to consist of three or of six members;
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;
- (e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to

decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same

district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

*Section 10, 45 U.S.C. §160:*

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling

expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

## APPENDIX B

**Excerpts From Testimony by Secretary of Labor Wirtz in the Committee Hearings on S. J. Res. 102 or H. J. Res. 565***Senate Hearings:*

SENATOR MONRONEY. Or failing in that, one or the other side seeking finality to this dispute would then go voluntarily to the ICC and put this suggested procedure for determination for the 2-year interim period into operation. Following the 2 years all bets are off. Is that correct?

SECRETARY WIRTZ. No, not all bets are off.

First, as you make it clear, it is 2 years after—there are two 2-year periods in here. One is for the effectiveness of this joint resolution. Another is for the effectiveness of a particular rule. And we are talking about the second one.

It would go on for 2 years unless they reached agreement.

But there is the contemplation here that this situation would be reviewed by the President at the end of the 2-year period, and I assume; that is, the first 2-year period—and I assume that he, on the basis of further report to the Congress, if that is necessary—well, they would simply consider the situation as it stood at that point. I don't think there is the intention of shutting off all responsibility on an all-bets-off basis.

SENATOR MONRONEY. Does this procedure vary from the no-strike cooling off period type of legislation, that is, this determination on application of one or the other of the disputants by the Interstate Commerce Commission of temporary rules, or settlements that will obtain for the 2-year period, subject to extension by the President or by the Congress, or whatever happens at the end of the 2 years if collective bargaining has not resolved the issues before that time?

SECRETARY WIRTZ. That is right. (Page 54)

. . . . .

SENATOR COTTON. At the expiration of the 2-year period the President reports to the Congress—it is mandatory in this act, he shall report to the Congress—

SECRETARY WIRTZ. Yes.

SENATOR COTTON. Prior to the expiration?

SECRETARY WIRTZ. I would assume so, yes.

SENATOR COTTON. And if no satisfactory solution, permanent solution, has been reached, the President has said, and it is not unlikely, that the President would seek a continuance. Isn't that a logical probability?

SECRETARY WIRTZ. I think it is very, very likely, approaching the point of strong probability, that this matter will be settled by the parties within the 2-year period.

SENATOR COTTON. But that is not my question. I differ with you necessarily on that. My question is assuming it is not settled.

SECRETARY WIRTZ. That it doesn't happen?

SENATOR COTTON. And if at the end of 2 years we find ourselves exactly in the position, or essentially in the position we are today, isn't there a strong likelihood the President would recommend an extension, not necessarily for 2 years but an extension of time of this period?

SECRETARY WIRTZ. If the situation were exactly the same as it is now, there would be no choice, I would think as a practical matter, about the answer to that question. . . . (Pages 55-56)

. . . . .

SENATOR SCOTT. Pursuing earlier questions, inspection of the various time periods allowed here would seem to bring the expiration of this resolution somewhere into the fall—somewhere in the area of the fall of 1965, late summer or fall. What would happen if the Congress is not in session at the end of that period and the President is due to make a report. How would that be dealt with.

SECRETARY WIRTZ. I don't think that the prospect is a real one. But if the circumstances warranted, I suppose

that there would be consideration of whether it warranted a special session of the Congress or something of that sort. (Page 61)

. . . . .

SENATOR MCGEE. What happens, again for the record, to an interim rule that expires without any negotiated rule having been made during the 2-year life?

SECRETARY WIRTZ. And no renewal of the resolution?

SENATOR MCGEE. Yes.

SECRETARY WIRTZ. It would mean that section 6 notices now in effect would still be standing and that there would be a right of either party to take whatever course of action it wanted at that time. (Page 81)

*House Hearings:*

MR. ROGERS of Texas. At the end of the 2-year period, Mr. Secretary, if we assume that these two issues, crew consist and the fireman matter, have not been settled, do you anticipate a request for an extension of the authority proposed in this resolution?

SECRETARY WIRTZ. If nothing has happened at the end of that period. Incidentally, this would be the period after which the rule has been operative for 2 years—the interim rule—if we reached that point we would face exactly the same situation we do here. May I take one moment to say that this would be the first industry, this would be the first pair of parties in the history of collective bargaining in this country in which it had been impossible to reach that agreement. In spite of my respect for Mr. Staggers' and Mr. Springer's reaction to this case, I don't rate it that way. I think these parties will in this period for very strong self-interest reasons work it out. I don't mean to fuzzy up my answer to your question. If I am wrong that 4 years from now they are apart, the answer would be that we would be back here. I would hope not. (Pages 59-60)

. . . . .

MR. GLENN. On page 6 of the bill down at the bottom of the page, it mentions that the President can extend his recommendation to the Congress for an extension of a resolution after the end of the 2-year period.

SECRETARY WIRTZ. That is correct.

MR. GLENN. So, in effect, we are then working under the interim rules and they could be extended by another resolution, could they not?

SECRETARY WIRTZ. There would be that possibility.

MR. GLENN. If we have that possibility then it is possible that this could continue indefinitely as a way of life so that these interim rules could, in effect, be permanent rules, is that not so?

SECRETARY WIRTZ. As a matter of logic or as a matter of practical prospect. As a matter of logic; yes, sir. (Page 64)

. . . . .

MR. NELSEN. One more question. If this dispute is tossed to the ICC, and it has been implied at the end of a 2-year period by attrition the group involved will be much less. That is on the assumption that the ICC adopts the rules of the Presidential Commission.

Suppose the ICC does not agree with the work rules that have been composed in these commissions, then at the end of a 2-year period, then what happens?

SECRETARY WIRTZ. The situation would require, again if we assume that the parties have fallen on their faces for another 2 to 4 years, which I am not willing to assume, then we face the necessity of doing something more about it here.

I just don't think there will be that failure of collective bargaining. But if there is—

MR. NELSEN. I appreciate your optimism. I hope you are right. (Page 65)

. . . . .

MR. ROGERS of Florida. . . . . Now I understand that in the 2 years the ICC would have the right to settle the dis-



agreements, allowing the parties to try to continue to get an agreement on these points of difference.

SECRETARY WIRTZ. Yes. Your question refers, I think, to the manning issues and to the standard procedures.

MR. ROGERS of Florida. Yes.

SECRETARY WIRTZ. There would be not just the right but the obligation to issue interim orders.

MR. ROGERS of Florida. At the end of a 2-year period, is a strike allowed?

SECRETARY WIRTZ. This would be 2 years after the order had become operative, and if there is no other action taken the answer would be "Yes."

MR. ROGERS of Florida. So a strike could come about 2 years after the order had been operative?

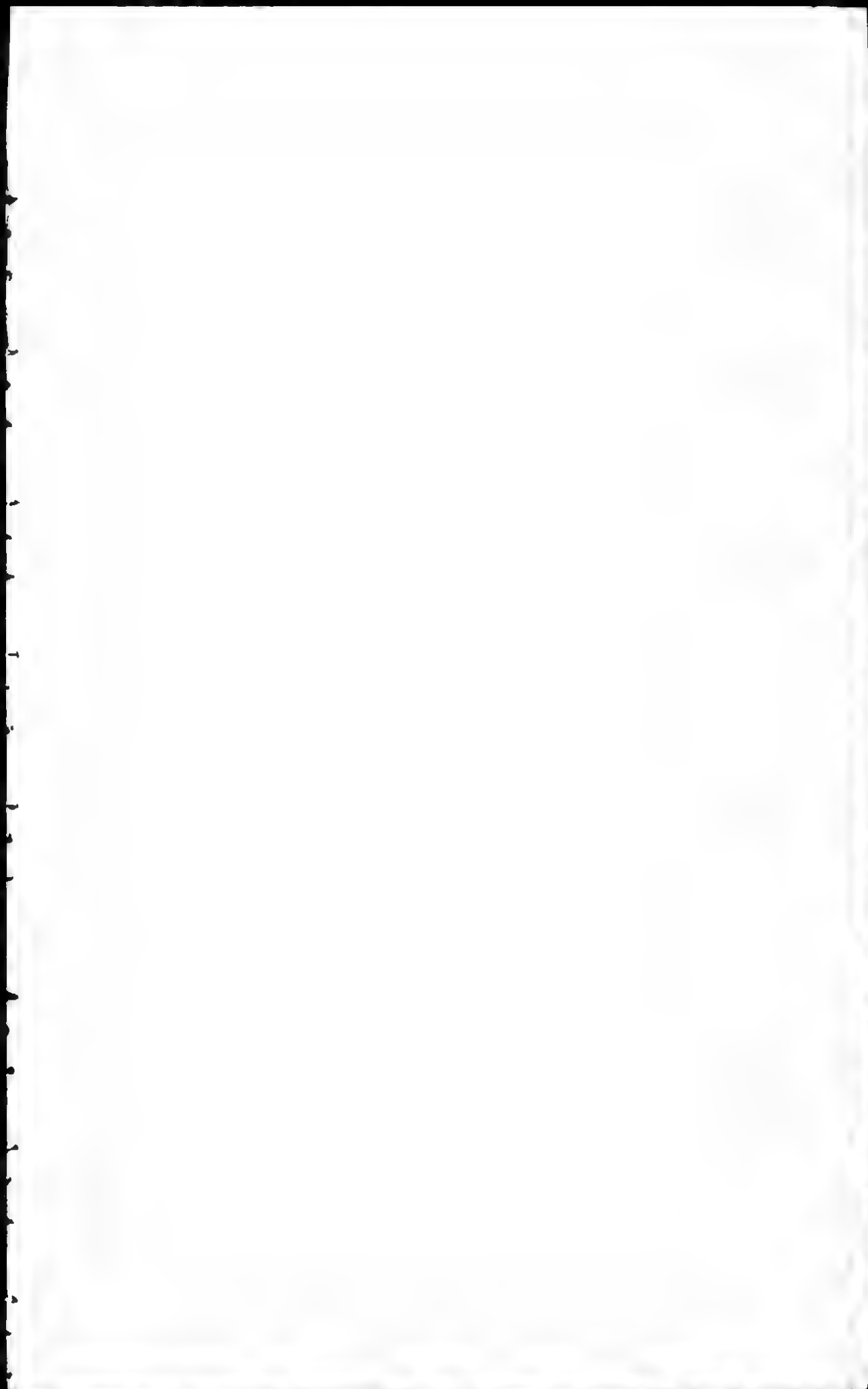
SECRETARY WIRTZ. It could. (Page 69)

• • • • •

MR. DEVINE. I think I know the answers to this, but I think it should be made clear in the record. Say all of the gymnastics provided in this bill are gone through and the procedures are followed and the Interstate Commerce Commission makes recommendations, and let us say the brotherhoods in this instance would not agree to go along with the recommendations.

Would they then be free to strike?

SECRETARY WIRTZ. After the interim rule had been in effect for the 2-year period, then assuming there is no agreement, the situation would be that they would be at that point unless there was further action taken by the Congress. (Page 107)



In the  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
United States Court of Appeals  
for the District of Columbia Circuit

FILED MAY 22 1967

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,  
Appellants,

v.

THE AKRON & BARBERTON BELT RAILROAD  
COMPANY, et al.,

Appellees.

THE AKRON & BARBERTON BELT RAILROAD  
COMPANY, et al.,

Appellants,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,  
Appellees.

BROTHERHOOD OF RAILROAD TRAINMEN,  
Appellant,

v.

THE AKRON & BARBERTON BELT RAILROAD  
COMPANY, et al.,

Appellees.

*Nathan J. Paulson*  
CLERK  
No. 20,152

No. 20,172

Nos. 20,229 and 20,249

PETITION FOR REHEARING, REQUEST FOR SUPPLEMENTAL  
RULINGS AND PROPOSED JUDGMENT BY APPELLEES IN  
NOS. 20,152, 20,229, and 20,249 AND BY APPELLANTS  
IN NO. 20,172

United States Court of Appeals  
for the District of Columbia Circuit

FILED MAY 22 1967

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In the  
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,  
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On May 12, 1967, this Court issued its Opinion in the above-captioned cases (which involve the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America), in Nos. 20,158 and 20,191 (which involve the Order of Railway Conductors and Brakemen), and in Nos. 20,192, 20,193, 20,215 and 20,216 (which involve the Brotherhood of Locomotive Firemen and Enginemen). On page 41

of that Opinion, the Court stated that:

"The parties are directed to submit within 10 days a proposed judgment, and to confer and endeavor to agree thereon. At that time the parties may also request supplemental rulings on any matters that have not been discussed in this opinion."

We have concluded that, in order to comply with this directive in the manner that would best meet the convenience of the Court and of counsel, we should make separate submissions with respect to the cases involving ORC&B and the cases involving the BLF&E as those unions do not have the same counsel as the unions involved in these appeals and to some extent different problems are involved in the three sets of cases.

We are not entirely certain what effect the above-quoted directive by the Court may have upon the time in which the parties may petition for rehearing under Rule 26(a) of this Court, which provides, in part, that: "A petition for rehearing may be filed with the Clerk when accompanied by proof of service on the adverse party within fifteen days after judgment or decision . . . ." It may be that the parties will have until 15 days after entry of the judgment, the form of which is now being proposed, in which to petition for rehearing with respect to any issue including those which clearly were decided in the Opinion of May 12, 1967. We are not certain that that is so, however, and it seems to us that, in any event, the Court may be benefitted in considering the form of the judgment to be entered if it has our views concerning any ruling clearly made in the Opinion of May 12, 1967 as to which a rehearing may be justified. We assume, of course, that following any supplemental rulings or the entry of a judgment which reflects any rulings contrary to our present understanding of what the Court has decided, we are entitled to petition for a rehearing with respect to such matters.

A. Requests for Supplemental Rulings or  
for A Rehearing.

1. The rules in effect following the expiration of the Award. The principal issues between the parties in Nos. 20,152 and 20,172 concerned the rules in effect following the expiration of Award 282. Very generally, the carriers contended that their crew-consist rules as modified by or pursuant to the Award continued to apply until changed in accordance with the Railway Labor Act while the unions contended that the rules in effect prior to Award 282 automatically were restored upon the expiration of the Award. We understand the Court to have agreed with the carriers on this general issue. Thus the Court stated (Opinion, at 17) that:

"We think the mere limitation of the effective period of the Award neither implies nor compels the construction the unions seek. Our ruling is that the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired. The legal underpinning for our ruling is not the Joint Resolution, which expired after 180 days of life--except insofar as necessary to sanction the Award. The ruling is not based on the Award, which had only a 2-year life, or on any agreement of the parties. The predicate of our ruling is, simply, the force of the Railway Labor Act. Certain work rules were in force on January 24, 1966 (or March 30, 1966, in the case of the BLF&E). The mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day--beyond the power of either party to institute a unilateral modification--subject to change only in accordance with the procedures prescribed by the Act . . . . This new-plateau reasoning applies even though the work rules are established by agreements of limited duration. 'The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination.' [quoting Manning v. American Airlines, Inc., 329 F.2d 32, 34 (2d Cir., 1964)]. It likewise applies even though the work rules are established by an arbitration award of limited duration."

We do not believe that there will be any question concerning the applicability of that ruling to the awards by special boards of adjustment made pursuant to Award 282. The unions have never contested the fact that the 43 crew-consist agreements made pursuant to Award 282 which provide in terms that they "shall continue in effect until changed in accordance with the provisions of the Railway Labor Act" (J.A. 65) do in fact continue to apply after expiration of the Award until changed in accordance with the Act. We think it also clear that the above-quoted ruling applies to the 20 crew-consist agreements which provide that they "shall continue in effect to the same extent as if they were awards rendered by special boards of adjustment" (J.A. 65), to the three agreements which provide that they shall continue in effect unless the unions' contention that the old rules are automatically restored "is sustained" (J.A. 65-66), and to the 12 agreements "which do not contain any provision concerning the period during which the agreement shall continue in force" (J.A. 66). The parties were in agreement, prior to this Court's opinion, that the ruling upon the general issue as to the rules in effect following the expiration of the Award would be controlling in all those situations (see Carriers' Brief in Nos. 20,152 and 20,172, at 28-29), and nothing that has been said by the Court casts any doubt upon that view.

The unions did make separate contentions with respect to ten agreements described in Section F of the Stipulation as to Facts (J.A. 66-70) which either expressly provided a termination date or else provided in effect that they should have the same duration as Award 282. See Carriers' Brief in Nos. 20,152 and 20,172, at 30-33. We understand the Court to have had those agreements in mind when it stated that : "This new-plateau reasoning applies even though the work rules are established by agreements of limited duration." And, of course, as we pointed out in our Brief (p. 31), the Manning decision relied upon by the



Court is directly in point with respect to such agreements. Hence, we are satisfied that the Court has made plain its affirmance of the ruling by Judge Holtzoff with respect to those agreements and we see no need for a supplemental ruling in that regard.

The unions also made separate contentions with respect to a crew-consist agreement between the BRT and the Richmond, Fredericksburg & Potomac Railroad Co., in which the parties differed as to what the status of the agreement would be following the expiration of Award 282. See Carriers' Brief in Nos. 20,152 and 20,172, at 33-34. There is no question about the fact that the work-rules provided in that agreement were in effect on January 24, 1966. Hence, the ruling by the Court, quoted above, that the same work rules are in effect, under the mandate of the Railway Labor Act, on "the following day--beyond the power of either party to institute a unilateral modification--subject to change only in accordance with the procedures prescribed by the Act" plainly is applicable and we see no need for a supplemental ruling with respect to that agreement.

Finally, there remains the agreement entered into by the BRT with the Southern Railway Company and certain of its subsidiaries. While those carriers were not parties to Award 282 insofar as their employees represented by the BRT are concerned, the agreement provided for certain changes in crew consists, adopted the protective provisions of Award 282 with minor modifications, and provided that: "This agreement . . . shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III . . . of the Award of Arbitration Board No. 282." See Carriers' Brief in Nos. 20,152 and 20,172, at 42-43. Since the Court's ruling was based upon the Railway Labor Act, rather than upon P.L. 88-108 or the Award, the fact that the carriers in question were not parties to the Award with respect to their employees represented by the BRT

is irrelevant. Under the Court's ruling, that agreement would continue to apply until changed in accordance with the Railway Labor Act even if it had provided only that it "shall continue in effect until January 25, 1966."

The further provision that it shall continue "thereafter" to the same extent as though it were a special-board award reinforces that conclusion since, as we have noted, the special-board awards plainly continue to apply until changed in accordance with the Railway Labor Act. Thus, while the Court did not expressly refer to this agreement, we see no need for a supplemental ruling in that regard.

With the exception of one special-board award which we discuss below (pp. 7-15 , infra), therefore, we understand the Court to have affirmed the rulings by Judge Holtzoff in his April 6, 1966 Judgment which were appealed from by the union, with respect both to the awards by the special boards of adjustment and to the various crew-consist agreements entered into pursuant to Award 282. The Court did not, however, expressly refer to or consider the appeal by the carriers, in its Opinion of May 12, 1967.

The carriers appealed from the rulings below that the procedures established by Award 282 for changing crew consists can neither be invoked nor completed following the expiration of Award 282. See Carriers' Brief in Nos. 20,152 and 20,172, at 37-42. While the Court did not mention the carriers' appeal in this regard, the reasoning of the Court in rejecting the unions' contentions would appear to provide solid support for the carriers' position that the court below erred and that the procedures established by Award 282 continue to apply until changed in accordance with the Railway Labor Act. Section 6 of the Railway Labor Act requires "at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions . . . ." An agreement establishing procedures for changing crew-consist rules

certainly would be an agreement "affecting . . . rules." Consequently, if the parties had entered into an agreement establishing the procedures provided by the crew consist provisions of Award 282, as they almost did, that agreement would continue to apply following the expiration of its term until changed in accordance with the Railway Labor Act. "The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination." Manning v. American Airlines, Inc., 329 F.2d 32, 34 (2d Cir., 1964), quoted at p. 17 of this Court's opinion.

We understand the Court to have held that this principle applies also to Award 282. Thus, as we have already noted (p. 3, supra), the Court explained that its ruling is not based upon P.L. 88-108 or the Award, but upon the Railway Labor Act, and stated that: "This new-plateau reasoning applies even though the work rules are established by agreements of limited duration. 'The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination.' It likewise applies even though the work rules are established by an arbitration award of limited duration." The Court, therefore, appears to have agreed with our contention that Award 282 is the equivalent of an agreement for purposes of Section 6 of the Railway Labor Act.

We would have thought it to be fairly clear, consequently, that the Court agreed with our position that the court below erred in holding that the crew-consist procedures established by Award 282 could not be invoked or completed after the expiration of the Award, even though the Court did not specifically address itself to the carriers' appeal, but for footnote 11 on pp. 11-12 of the Court's opinion. In that footnote, the Court stated that:

"The parties and the District Court have all accepted and implemented the Award as effective January 25, 1964. With that date marking the first day of the two-year period it is clear that the full two-year period expired at the end of January 24, 1966. We see no valid basis for the assumption of the District Judge that the Award was in existence on January 25, 1966. It may be regrettable, but we consider the Award rendered on January 25, 1966, by a special board of adjustment with respect to a dispute between BRT and the Green Bay & Western Railroad Co. and Kewanee, Green Bay & Western Railroad Co. to be without legal significance, unless it has been adopted by agreement of the parties, a question not before us."

We consider later the ruling that January 24, 1966 was the last day of the Award. For present purposes, however, the important aspect of footnote 11 is the statement that a special-board award rendered the following day is "without legal significance," except by agreement of the parties. We do not see how that statement can be reconciled with our position that the procedures established by the Award continue to apply until changed in accordance with the Railway Labor Act or with the reasoning by the Court in the text of its opinion which we have referred to above as supporting that position. If those procedures continue to apply, then a special-board award rendered after the expiration of Award 282 should have "legal significance" unless it is invalid for some other reason.

It may be that, in view of the great number of cases and issues involved, the Court did not focus on this point when footnote 11 was drafted and approved. The fact that the Court, in its opinion, did not expressly consider the issues raised by the carriers' appeal and did not attempt to explain how footnote 11 may be reconciled with the Court's reasoning concerning the rules in effect after the expiration of the Award provides some indication that this is so. In any event, in view of the circumstances we believe that we are justified in requesting

a supplemental ruling upon the carriers' contention in their appeal that the court below erred in holding that the procedures established by Award 282 could not be invoked or completed after the expiration of the Award. If the Court in such supplemental ruling agrees that those procedures continue to apply until changed in accordance with the Railway Labor Act, then we request that the Court also rehear or reconsider its ruling in footnote 11 concerning the "legal significance" of the special-board award mentioned therein and hold that that award also continues to apply until changed in accordance with the Railway Labor Act.

2. The expiration date of Award 282. We also request a rehearing or reconsideration of the rulings in footnote 11 for another reason. We believe that the Court plainly erred in ruling that January 24, 1966, rather than January 25, 1966, was the last day of the effective period of Award 282. In view of the many issues having a broader importance and the fact that the point has no practical significance if our contention that the procedures established by the Award continue to apply is accepted, the issue concerning the expiration date of the Award was not briefed as thoroughly as it might have been and, insofar as we can recall, was not mentioned in the oral arguments. But while the issue may not be of much relative importance in the over-all context of the appeals before the Court, it will be of great importance to the two carriers that obtained the special-board award on January 25, 1966 (and to their employees) should this Court on our request for a supplemental ruling decide that the procedures established by Award 282 may not be invoked or completed after expiration of the Award.

This issue was briefed at pp. 34-36 of the Carriers' Brief in Nos. 20,152 and 20,172. We there pointed out that, only a few days prior to January 25, 1966, the BRT sent a letter to the carriers in which it stated that Award 282 expired "at 12:01 AM, January 26, 1966;" that the carriers alleged in their Complaint and the BLF&E admitted in its Answer that January 25, 1966 was the last day of the Award; that the proceedings below were conducted throughout on that basis, including the Stipulation of Facts entered into by the parties which included the special-board award in question in the Section listing the special-board awards made during the effective period of Award 282 rather than in the Section giving detailed facts concerning the special-board awards rendered (or as to which proceedings before a special board of adjustment were still pending) after the expiration of Award 282; and that counsel for the BRT raised the issue for the first time in the hearing upon the form of the order to be entered by the court below upon the basis of its prior rulings that, among other things, the Award expired on January 25, 1966--a ruling which counsel had not contested in the arguments preceding the opinion of the court below.

This Court commenced its footnote 11 with the statement that, "The parties and the District Court have all accepted and implemented the Award as effective January 25, 1964." It seemed to us equally clear, on the basis of the circumstances summarized above, that "the parties and the District Court have all accepted and implemented the Award as effective" through January 25, 1966, and we thought that should suffice particularly since Article IV of Award 282 and Section 4 of P.L. 88-108 both permit the two-year period of the Award to be extended by agreement. This Court appears, however, to have regarded that issue as not being before it, stating in footnote 11 that the special-board award rendered on January 25, 1966 is "without legal significance,



unless it has been adopted by agreement of the parties, a question not before us." We do not understand the Court to mean by that statement that it is leaving open, for determination upon remand, only the question of whether the special-board award has been formally "adopted" by a separate agreement. Surely, the Court did not intend to foreclose the carriers from establishing a common understanding or agreement that Award 282 extended through January 25, 1966 for purposes of permitting the rendering of the special-board award. Because of the belated manner in which the issue as to the validity of that award was raised below, the carriers have not had any opportunity for a hearing upon the question of whether such an understanding or agreement existed.

But however that may be, we neglected in our brief to point out that there was a sound legal basis for the assumption by all concerned that January 25, 1966, rather than January 24, 1966, was the last day of the effective period of Award 282. That basis is as follows:

Section 4 of P.L. 88-108 provided, in relevant part, that:

"The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." (Emphasis added.)

Pursuant to that provision, Article IV of Award 282 provided that:

"This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." (Emphasis added.)

In Sheets v. Selden's Lessee, 2 Wall. (69 U.S.) 177, 190 (1864), the Supreme Court stated that: "The general current of the modern authorities on the interpretation of contracts, and also of statutes, where time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period from or after a day named, is to exclude the day thus designated and to include the last day of the specified period." (Emphasis by the Court.) This "rule as to computing time" was quoted and

applied by this Court in Chambers v. Lucas, 59 U.S. App. D.C. 327, 41 F.2d 299, 300 (1930). It was reiterated and applied by the Supreme Court in Burnet v. Willingham L. & T. Co., 282 U.S. 437, 439-440 (1931).

This Court gave further extensive consideration to the issue in Freeman v. Pew, 61 U.S. App. D.C. 223, 59 F.2d 1037 (1932). That case involved a statute providing that no action for malicious prosecution should be brought "after one year from the time when the right to maintain any such action shall have accrued." The right of action accrued and a complaint could have first been filed on January 20, 1927, but the complaint was not filed until January 20, 1928. In holding that the complaint was not barred by the statute, this Court stated (59 F.2d, at 1037-1038) that:

"Conflict and confusion may be found among the decisions regarding computation of time. In the multiplicity of statutes and rules of court respecting time within which rights may exist or be exercised or enforced, a certain and uniform rule of computation, whether arbitrary or not, is much to be desired, and so we shall not view the statute here with a critical eye in an effort to find ground for a nice distinction, nor do we think it would be helpful to endeavor to reconcile the decisions. Here, rights do not depend upon the order of events occurring on the same day, and so there is no good reason for splitting the day. In such circumstances, it has long been the settled doctrine that the law, disregarding fractions, takes the entire day as the unit of time. In a number of the states, it is held that where the computation of time is from an act done or a right accrued, the day on which the act is done or on which the right accrued is to be included. The theory of this is that after the act is done or the right accrued, suit may be instituted, and therefore the statute commences to run immediately. Many such courts also hold that if the statute requires suit to be commenced within a certain period after the 'day' a contrary rule applies.



"But we think to follow this line of reasoning would be to add to the confusion which now exists, and therefore we prefer to adhere to the rule long ago announced by us in *Ambrose v. Brown*, 42 App. D.C. 25, 33, which is also the rule in many of the states. In that case the statute provided that no action upon a note should be brought 'after three years from the time when the right to maintain any such action shall have accrued.' We held that the day the right of action accrued should not be counted.

"The effect of this is to avoid the distinction between a limitation running from a day and one from an event, and this, it seems to us, is in accord with the views of the Supreme Court on the subject. In *Burnet v. Willingham L. & T. Co.*, 282 U.S. 437, 439 . . . , Mr. Justice Holmes, who delivered the opinion of the court in that case, quoted with approval the language of Chief Justice Bronson in *Cornell v. Moulton*, 3 Denio (N.Y.) 12, 16, as follows: 'When the period allowed for doing an act is to be reckoned from the making of a contract, or the happening of any other event, the day on which the event happened may be regarded as an entirety, or a point of time; and so may be excluded from the computation.

"This rule seems to us consonant with the general sense and common usage of the language of the statute, in harmony with the modern view in the interpretation of contracts and statutes, and, we hope, will settle the question, so far at least as the jurisdiction of this court extends."

The "hope" expressed in the last paragraph of the above quotation appears to have been realized prior to the May 12, 1967 Opinion with which we are now concerned. Insofar as we have been able to discover, the rule that the first day is to be excluded in computing a period of time running from a particular day or the happening of a particular event has not subsequently been questioned. That rule also is generally recognized and applied in other federal courts. See *Prince v. United States*, 185 F. Supp. 269, 270-271 (E.D. Wis., 1960), and authorities there cited. It has been recognized and adopted by the Federal Rules of Civil Procedure, Rule 6(a) of which provides in part that:

"In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. . . ."

In Union National Bank v. Lamb, 337 U.S. 38 (1949), the issue arose as to whether an appeal to the Supreme Court was timely within the requirement of 28 U.S.C. §2101 (c) that an appeal be applied for "within ninety days after the entry" of the judgment or decree, when the ninetieth day fell on a Sunday and the appeal was not applied for until the next day. In holding that the appeal "did not fail for lack of timeliness," the Court stated (id., at 40-41) that:

"Rule 6(a) of the Rules of Civil Procedure provides that where the last day for performance of an act falls on a Sunday or a legal holiday, performance on the next day which is not a Sunday or legal holiday is timely. That rule provides the method for computation of time prescribed or allowed not only by the rules or by order of court but by 'any applicable statute.' Since the rule had the concurrence of Congress, and since no contrary policy is expressed in the statute governing this review, we think that the considerations of liberality and leniency which find expression in Rule 6(a) are equally applicable to 28 U.S.C. §2101(c)."

See, also, Wilkes v. United States, 192 F.2d 128, 129 (5th Cir., 1951); Simon v. Commissioner of Internal Revenue, 176 F.2d 230, 232 (2d Cir., 1949).

While the Supreme Court in the Lamb case was concerned with that aspect of Rule 6(a) which excludes Sundays when it is the last day on which an act may be performed, there is no reason why the courts should not also apply the "considerations of liberality and leniency which find expression" in that portion of Rule 6(a) which provides that "the day of the act, event, or default

from which the designated period of time begins to run shall not be included" in computing time for purpose of "any applicable statute" which comes before the court. See Prince v. United States, supra. Indeed, a Sunday was the last day for purposes of applying for the appeal in the Lamb case only because that rule for the computation of time had been applied, and Rule 6(a) did not then provide for the exclusion of Saturdays. We are not aware of anything in P.L. 88-108, its legislative history or in Award 282 which indicates that this general federal rule for the computation of time was intended to be inapplicable in computing the running of the two-year period of the Award. Consequently, January 25, 1964 should be excluded and January 25, 1966 is the last day of the two-year period.

3. Prematurity of the Section 6 notices. Of course, we disagree with the opinion of the Court insofar as it overrules the decision below with respect to the prematurity of the Section 6 notices served by the BRT prior to the expiration of the Award and with respect to certain related issues. That matter was extensively briefed and argued, in both Nos. 20,152 and 20,172 and Nos. 20,229 and 20,249, and obviously has been the subject of extended consideration by the Court. The Court in its opinion, however, relies heavily on an authority and upon considerations which were not argued by our opponents and which we believe do not support the decision of the Court or are in error. We think we are justified, therefore, in also requesting reconsideration or rehearing of the prematurity issue. The Court stated (Opinion, at 22-24), among other things, that:

"In essence then we have a mechanism tantamount to an arbitration agreement, albeit one drafted by Congress, that confers on the arbitrator the power to impose a settlement binding for up to two years. It becomes appropriate, then, to consider what would have been the rights and duties of the parties if they had themselves written the arbitration agreement. We are not concerned here with customary adjudicatory or grievance arbitration. Although so-called 'legislative' arbitration agreements are relatively infrequent they are not unknown. Under such agreements, prospective rules and working conditions, instead of being determined by agreement of the union and employer, as is customary, are determined by an arbitrator to whom the function is delegated. Such a determination by arbitration is equivalent to a determination by agreement insofar as the rights and duties of the parties concerning future modification are concerned. An arbitration award does not operate to 'prevent the [parties] from seeking through negotiations under the procedures provided for by the Railway Labor Act or otherwise a new agreement . . . covering the rules . . . .' [citing Brotherhood of Railroad Trainmen v. St. Louis Sw. Ry., 220 F. Supp. 319, 326 (E.D. Tex., 1963)]

\* \* \*

To recapitulate, the Railway Labor Act not only requires railway employers and unions to confer and bargain on work rules established by agreements or awards having a fixed expiration date when one party wants to change the rules, but permits the statutory machinery to be invoked prior to expiration in order to seek an agreement on changes to become effective on or after expiration.

If an agreement (or award) contains a fixed expiration date, rather than the common indefinite or automatic self-renewal term, then the notice must indicate a proposed effective date for changes that is not only at least thirty days after the notice, but also a time after the outstanding agreement or award expires. Nothing in the Railway Labor Act, or the scheme of Public Law 88-108, forbids service of a notice more than thirty days before the suggested rules would or could be effective, and nothing relieves the recipient from the duty to commence bargaining at that earlier stage."

We note first our belief that nothing in the St. Louis Southwestern opinion, quoted by this Court, supports the decision on the prematurity issue. That case held an arbitration award to be valid and denied a request for injunctive relief against enforcement of the award. There was no issue in the case, as we understand the opinion of Chief Judge Sheehy, as to whether the union could serve or require bargaining upon Section 6 notices during the period of an arbitration award. Indeed, in the sentence from which this Court took its quotation, Chief Judge Sheehy merely pointed out that he was not deciding any such issue, as follows: "Nothing herein stated shall be construed as an expression of an opinion by the Court that the Defendants are not under a duty and obligation to comply with the provisions of the Railway Labor Act in an effort to reach a new agreement with the Plaintiffs relative to the rules, rates of pay and working conditions of the employees represented by the Plaintiffs who are affected by the coordination in question after the coordination is put into effect in accordance with the decision of the Arbitrator." 220 F. Supp., at 326. Moreover, the arbitration award involved in the case did not have a termination date but was for an indefinite term. See 220 F. Supp., at 326-328, where the award is set forth.

The latter observation brings us to our second point. That relates to the statement by the Court in the last paragraph quoted above to the effect that if "an agreement (or award) contains a fixed expiration date, rather than the common indefinite or automatic self-renewal terms," then a Section 6 notice to change the agreement (or award) must propose that the change take place after the expiration of the fixed termination date, but "[n]othing in the Railway Labor Act . . . forbids service of a notice" prior to that termination date. This has not been the interpretation given to the Railway Labor Act by the only prior cases of which we are aware that have considered the matter--cases not previously called to the attention of this Court as the unions did not support their position with an argument similar to that thus advanced by the Court.

In Flight Engineers' Inter. Ass'n v. American Airlines, Inc., 303 F.2d 5 (5th Cir., 1962), appeal dismissed by stipulation, 314 F.2d 500 (5th Cir., 1963), the carrier and union had entered into a five-year collective bargaining agreement effective May 1, 1958. On the same day, the carrier and union also entered into a supplemental agreement which related only to jet aircraft operations. The supplemental agreement provided that "written notice of an intended change in any provision could be served 30 days after the first anniversary date of the first turbine aircraft in scheduled passenger service." 303 F.2d, at 7. The union served a notice under Section 6 of the Railway Labor Act within the period thus provided in the supplemental agreement, but "the Carrier took the position that a number of [the union's] demands were actually covered by the terms of the basic agreement, and therefore not open for bargaining for 5 years." Ibid.

The trial court enjoined a strike by the union pending a determination by an adjustment board, under Section 3 of the Railway Labor Act (45 U.S.C. §153), of whether or not the union's demands were outside the scope of the reopening clause in the supplemental agreement, and the Fifth Circuit affirmed. The Court of Appeals noted that the issue as to whether the "demands were outside the scope of the reopen clause involved two questions"-- the interpretation of that clause and a question of law "whether on either interpretation of the contract, the Union could, or could not, compel bargaining." 303 F.2d, at 12. With respect to the latter question, the Court stated (303 F.2d, at 13) that:



"Again, without anticipating what the decision of the System Board of Adjustment on the merits (assuming it has jurisdiction) must be, this analysis rests on the premise that the law as such will give vitality to the duration clauses and correlative re-opening clauses of labor contracts. The Union argues in effect that since no one in 1958 knew all of the problems which would arise in the operation of jets, the Union could not foreclose its statutory right--and duty--to bargain when, and as, and as often as needed. But any such rule leads either to chaos or a demolition of the concept of industrial peace through labor contracts fairly arrived at."

In Capitol Airways, Inc. v. Air Line Pilots Ass'n, 41 CCH Labor Cases ¶16,739 (M.D. Tenn., 1961), the carrier and union executed a collective bargaining agreement which contained a provision that the agreement would expire on June 30, 1961. The plaintiff contended that it was a "valid contract" and hence that it had "no duty to bargain with the defendant" union in regard to the employees covered by the contract "until the contract expires on June 30, 1961." The union, on the other hand, contended that the "contract is void and therefore the plaintiff has the duty to bargain at the present time" with respect to those employees. The Court stated that if the agreement were valid it follows "necessarily that the plaintiff is not required to bargain [with those employees] with respect to their terms and conditions of employment until the expiration of such agreement on June 30, 1961;" held that the agreement was valid, and granted a summary judgment for the plaintiff carrier. See, also, Rutland Ry. v. Brotherhood of Loc. Eng., 307 F.2d 21, 36 (2d Cir., 1962), where the court, in a "minor" dispute case, stated, in dicta, that: "We do not say that the issue in the present case is not a bargainable one. We have no doubt that the brotherhoods, upon the expiration of the existing agreements, may require the railroad to bargain . . . ." (Emphasis added.)

These cases stand for the proposition that, under the Railway Labor Act, carriers and unions by agreement may preclude for a specified period their rights to serve and require bargaining upon a Section 6 notice, and for the further proposition that the inclusion of a termination clause in an agreement has the purpose and effect of precluding any bargaining upon the matters covered by the agreement prior to its termination. Indeed, this view is implicit in the holding of the Manning case, upon which this Court relied, that the obligations of the parties under an agreement continue after the specified expiration date until changed in accordance with the Railway Labor Act. In the railway and airline industries subject to that Act, the significance of a fixed expiration date in a collective bargaining agreement is not that the rights of the parties under the agreement then terminate, but that the parties then have the right to demand bargaining upon proposals to change the agreement. If the parties desire to permit the matters covered by the agreement, or some of them, to be the subject of bargaining at a specific earlier point, they include a reopening clause in the agreement. See United Ind. Wkrs. v. Board of Trustees of Galveston Wharves, 351 F.2d 183, 185, 190 (5th Cir., 1965); Manning v. American Airlines, Inc., 329 F.2d 32, 33 (2d Cir., 1964); Pan American W. Airways v. Flight Engrs. Int'l Ass'n, 306 F.2d 840, 843 (2d Cir., 1962); American Airlines, Inc. v. Air Line Pilots Ass'n, 169 F. Supp. 777, 790 (S.D.N.Y., 1958). If the service of a new Section 6 notice at any time after the effective date of the agreement is intended to be permitted, the parties simply omit any expiration date--the "common indefinite . . . term" agreements to which this Court referred.



This Court indicated in its opinion that it considers the principles applicable to agreements having a fixed termination date to be applicable also to arbitration awards having a fixed termination date. We agree, but for the reasons stated above we submit that the Court erred in its view that, under the Railway Labor Act, such agreements or awards permit a party to require the resumption of bargaining prior to the fixed termination date. Rather, the whole purpose of the termination date is to preclude bargaining upon proposed changes in the agreement from being required prior to that date. We believe that the error of the Court in this regard calls for a rehearing or other reconsideration of its holding that the fixed termination date provided in P.L. 88-108 and Award 282 pursuant thereto was not intended to preclude the unions from requiring the carriers to bargain, prior to that date, upon Section 6 notices proposing changes in the rules established by the Award.

4. Carriers Subject to P.L. 88-108 and the Award. The Court in its opinion did not refer to the contention by the BRT that two carriers which entered into crew-consist agreements with that union pursuant to Award 282 were not subject to P.L. 88-108 and Award 282. See Carriers' Brief in Nos. 20,152 and 20,172, at 43-46. Although those carriers did not serve the BRT with the November 2, 1959 notices, they were served by the BRT with the September 7, 1960 notices and those notices remained outstanding throughout the period preceding the enactment of P.L. 88-108 and the issuance of Award 282. The court below held, in essence, that any carrier which either served the 1959 notice or received the 1960 notice is subject to P.L. 88-108 and the Award, with respect to the particular union involved, if one or both of those notices remained outstanding throughout the period preceding the enactment of P.L. 88-108.

At page 10 of its opinion, this Court stated that: "Public Law 88-108 expressly forbade any unilateral self-help by the parties who had served or received the notices of 1959 and 1960." In so commenting, the Court may have indicated that it either agrees with the court below or is even more adverse to the contentions by the union in that the Court views P.L. 88-108 (and, consequently, the Award) as being applicable to a carrier which either served the 1959 notice or received the 1960 notice even if neither notice remained outstanding between the carrier and the union involved throughout the period preceding the enactment of P.L. 88-108.

We recognize, however, that the comment quoted above was made more or less in passing in the "historical" section of the Court's opinion, and may not represent a considered ruling upon the issue as to the circumstances in which P.L. 88-108 and the Award applied to a particular carrier. Consequently, we

have no objection to a supplemental ruling upon this issue if one is requested by the BRT. In the event of such a supplemental ruling, however, we urge that the Court also consider our contention that the BRT is estopped from raising the issue. Carriers' Brief in Nos. 20,152 and 21,172, at 43-44.

5. The Norris-LaGuardia Act. The Court did not refer in its opinion to the contentions by the unions as to the applicability of the Norris-LaGuardia Act--an issue which we contended was not properly before the Court in these cases. See Carriers' Brief in Nos. 20,152 and 20,172, at 51. But however that may be, the opinion by the Court in No. 20,316 (decided by the same panel on May 12, 1967) confirmed our contention on the merits of the issue that "the Norris-LaGuardia Act . . . does not apply to prohibit or govern injunctive proceedings regarding acts determined to be violative of the Railway Labor Act." Opinion in No. 20,316, at 18. That decision should obviate any need for a supplemental ruling upon the Norris-LaGuardia issue in these cases.

B. The Judgment to Be Entered by the Court.

In accordance with the directions of the Court (Opinion, at 41), counsel for the various parties in all the cases decided by the Opinion of May 12, 1967 conferred on Thursday, May 18, 1967, and endeavored to agree upon a proposed judgment. However, counsel for the carriers and counsel for the respective unions disagreed both in matters of substance and in matters of approach.

With respect to the matters of approach, one of the differences which we have with counsel for the unions involved in these cases is an unimportant detail. Since both Nos. 20,152 and 20,172 and Nos. 20,229 and 20,249 involve appeals from orders entered in the same case below and relate to the same parties, we thought it appropriate for a single judgment of this Court to dispose of both sets of appeals. We discovered in the meeting of counsel, however, that counsel for the unions had drafted separate proposed judgments for each set of cases. Insofar as we are aware, either method is acceptable to both sides, but since the parties are in disagreement on more serious matters which prevent an agreed proposed judgment in any event, both sides are proceeding in conformity with their respective original approaches.

A more serious difference of approach concerns the function or nature of the judgment to be entered by the Court. If we are correct in our understanding of the usual practice when a decision below is reversed in whole or in part, the judgment entered by this Court remands the case with directions that a new judgment or order be entered in conformity with the directions of this Court; e.g., dismissing the complaint rather than granting relief thereon, denying rather than granting a motion for summary judgment, or modifying the original judgment below in various particulars. Counsel for the various unions indicated in our conference that they had the same understanding of the usual

practice, but consider the request by this Court for submission of a proposed judgment to indicate that the Court does not intend to follow that practice here. Accordingly, the judgments which they propose would not remand the cases for the entry of new judgments below in conformity with the directions of this Court, but would constitute the ultimate judgments in the cases.

We do not agree that the Court had any such intention. In our view, the reason for the submission of proposed judgments to this Court is to assist the Court in formulating its directions to the court below as to the new judgments to be entered by that court. We do not believe that the action of the Court in calling for proposed judgments indicates an intention to depart from its usual practice concerning the nature of the judgment to be entered, any more than does the action of the Court in calling upon the parties to submit requests for supplemental rulings if they so desire. Both procedures seem to us to stem simply from a desire to avoid overlooking some matter because of the multiplicity of cases and issues involved. Accordingly, the judgments which we have proposed follow the usual form by remanding the cases with directions.

We note that one consequence of the approach favored by the unions, whereby the ultimate judgments are entered by this Court and new judgments are not entered in the District Court, is their proposals for including provisions in this Court's judgments whereby application could be made directly to this Court for future interpretation and enforcement of the judgments. We cannot believe that the Court intended to permit the District Court to be by-passed in this manner and to draw upon itself the task of giving original consideration, which could include extensive trials or hearings of factual disputes, to such matters.

While we have not yet seen the arguments which the unions may make in support of their proposed judgments, we are not aware of any reason peculiar to these cases why the Court should depart from its usual practice. The number and complexity of the cases and issues undoubtedly constitute good reason for obtaining the assistance of counsel in formulating the directions to be given to the court below, but they do not constitute any reason for by-passing that court altogether and having the ultimate judgments in these cases entered by this Court. We note, in this regard, that the judgment in Nos. 20,152 and 20,172 proposed by the unions involved here is understandable only by reference to the original judgments entered by the court below. We fail to see why it would not be far more preferable simply to remand the case for the entry of fresh judgments incorporating those modifications of the old judgments which this Court may direct.

Another difference in approach concerns those matters dealt with in the judgments below which were not discussed in the opinion by this Court. We would have thought it evident that any part of the judgment below not overruled by this Court remains undisturbed, subject to the right of the parties to "request supplemental rulings on any matters that have not been discussed in" the Court's opinion. Our opponents apparently take the position that any ruling below not discussed by this Court either has been overruled or else drops out of the case, although they are not entirely consistent in their application of that approach.

Finally, we believe that the language of the original judgments below should be retained insofar as possible consistent with the rulings of this Court. The parties have had more than a year in which to operate under that language and by now are relatively certain as to its meaning and effect, while

new language is bound to create new uncertainties even though no substantive change was intended. Unlike counsel for some of the other unions, counsel for the unions involved in these cases in general have followed the same approach in this regard.

1. The carriers' proposed judgment. Appendix A hereto sets forth the substance of the judgment which we propose be entered in the event that the Court rules in our favor upon the matters as to which we have requested a supplemental ruling or a rehearing. Appendix B sets forth the April 6, 1966 judgment entered below in Nos. 20,152 and 20,172, and shows the changes which this Court would direct to be made therein if it enters the judgment which we propose in Appendix A. Under that proposed judgment, the May 31, 1966 order appealed from in Nos. 20,229 and 20,249 would simply be affirmed so we have not included an appendix comparable to Appendix B with respect to that order. Appendix C sets forth the substance of the judgment which we propose be entered in the event that the Court rules against us on the matters as to which we have requested a supplemental ruling or a rehearing. Appendix D sets forth the April 6, 1966 judgment entered below in Nos. 20,152 and 20,172, and shows the changes which this Court would direct to be made therein if it enters the judgment which we propose in Appendix C. Under that proposed judgment, the District Court would be directed to vacate the May 31, 1966 order appealed from in Nos. 20,229 and 20,249 in its entirety and to enter a simple order dismissing the carriers' motion for supplemental relief. Hence, we have not included an appendix comparable to Appendix D with respect to that order. Should this Court agree with us on some of the issues as to which we have requested a supplemental ruling or a rehearing and disagree on others, we do not believe it will be difficult to select the appropriate provisions from the two proposals.



Appendix A. As noted, this proposed judgment assumes that the Court will rule in our favor upon the issues as to which we have requested a supplemental ruling or a rehearing. Based upon that assumption, we believe that the only changes which need be made in the judgment and order below is in those provisions of the April 6, 1966 judgment which embodied the decision by Judge Holtzoff that the carrier can neither initiate nor complete the procedures established by Award 282 for changing crew-consist rules after the expiration of the Award. See pp. 6-9, supra where we request a supplemental ruling upon that issue. We believe that our proposed new paragraphs 2 and 3 are self-explanatory.

Thus, the judgment proposed in Appendix A would leave intact the following paragraphs of the April 6, 1966 judgment below: paragraph 1 specified the date on which the Award expires (rehearing requested, pp. 9-15, supra); paragraphs 4 and 5 set forth the rulings, affirmed by this Court (see pp. 3-5, supra), that the carriers' rules as modified by the special-board awards and crew-consist agreements continue to apply until changed in accordance with the Railway Labor Act; paragraph 6 sets forth a ruling below which has not been attacked in this Court; paragraph 7 sets forth the ruling below concerning the carriers subject to P.L. 88-108 and the Award (see pp. 22-23, supra); paragraph 8 sets forth the ruling below with respect to the agreement entered into by the BRT with Southern and certain of its subsidiaries (see pp. 5-6, supra); paragraph 9 sets forth the ruling below that the Section 6 notices served during the period of the Award were premature (rehearing requested, pp. 15-21, supra); paragraph 10 merely declares that the unions cannot strike over the continued application of the special-board awards and crew-consist agreements until they have exhausted the procedures of Railway Labor Act with respect to Section 6 notices proposing changes therein. Except as to the substantive rulings underlying that



paragraph (paragraphs 4 and 5), it has not been attacked here apart from its reference to the Norris-LaGuardia Act (see p. 23, supra). Paragraphs 11 and 12 are procedural in nature and have not been attacked in this Court.

The second paragraph of the judgment proposed in Appendix A would simply affirm the May 31, 1966 order of the District Court appealed from in Nos. 20,229 and 20,249. That order merely reiterated and enforced, upon a motion for supplemental relief filed on behalf of certain of the carriers, the ruling in paragraph 9 of the April 6, 1966 judgment declaring the Section 6 notices served during the period of the Award to be premature and ineffective until the day after the expiration of the Award. Our proposed affirmance of that order, therefore, rests upon a favorable response to our request that this Court reconsider its ruling that the notices were not premature. If the Court does reconsider and determines that the Section 6 notices were premature, then we do not believe that there will be any serious question about the propriety of affirming the May 31, 1966 order. While the Court in its opinion did not advert to the contention by the BRT that the court below invaded the jurisdiction of the National Mediation Board by its rulings upon the union's Section 6 notices (see Carriers' Brief in Nos. 20,229 and 20,249, at 21-27), in ruling upon the merits of contentions with respect to those notices this Court must have implicitly rejected the contention that only the NMB had jurisdiction to do so.

Appendix C. As we have noted, this proposed judgment assumes that the Court will rule against us upon the issues as to which we have requested a supplemental ruling or a rehearing. Since upon the basis of that assumption the Court will adhere to its ruling that the Section 6 notices were not premature, all aspects of the May 31, 1966 order entered below must be set aside. We thus propose, in the second paragraph of Appendix C, a direction that the

District Court vacate that order and enter an order denying the carriers' motion for supplemental relief. A new order simply denying the motion for supplemental relief appears to us to be all that is called for. The motion was based upon the prematurity ruling in the April 6, 1966 judgment, would not have been made but for that ruling, and falls together with that ruling. The BRT did not file a cross-motion for supplemental relief on its behalf.

With respect to the modifications of the April 6, 1966 judgment which would be directed, most are required by the ruling in footnote 11 of the Court's opinion that January 24, 1966, rather than January 25, 1966, was the last day of the Award. We think those modifications are self-evident as they involve only changes in dates. <sup>\*/</sup> The further ruling in footnote 11 concerning the special-board award rendered on January 25, 1966 is reflected in numbered paragraphs 3 and 4 of Appendix C, which direct modification of paragraphs 3 and 4 of the April 6, 1966 judgment.

Paragraph 3 of that judgment would be modified to include that special-board award among those declared to be "ineffective" because rendered after expiration of the Award, even though the proceedings were initiated prior thereto, but subject to the right of the carriers in a further hearing to establish an understanding or agreement by the parties that Award 282 was in force on January 25, 1966, as we believe was intended by this Court. See pp. 10-11, supra. The proposed revision of paragraph 4 is simply the converse of the proposed revision of paragraph 3. It would remove the special-board award rendered on January 25, 1966 from the list of those that continue to apply until changed in accordance with the Railway Labor Act, unless at the further

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<sup>\*/</sup> The January 25, 1966 date in paragraph 8 of the judgment below would not be changed as it is based upon the agreement of the parties quoted therein. The carriers (Southern and certain of its subsidiaries) making that agreement were not subject to P.L. 88-108 and the Award.

hearing the carrier establishes that the parties agreed or understood that the award could be issued pursuant to Award 282 on January 25, 1966.

Numbered paragraph 7 of Appendix C proposes to modify paragraph 9 of the April 6, 1966 judgment to declare that the Section 6 notices served during the period of the Award were not premature or invalid for that reason, thus reversing the ruling below in accordance with the ruling by this Court--assuming that the Court adheres to that ruling despite our request for reconsideration thereof. Just as it sufficed for purposes of the decision below merely to declare that the notices were premature, we think it also should suffice for purposes of the decision by this Court merely to declare that they were not premature.

Since for purposes of the judgment proposed in Appendix C we assume an adverse decision upon our request for a supplemental ruling on the issues raised by the carriers' appeal, the judgment would not disturb paragraphs 2 and 3 of the April 6, 1966 judgment (except for the change resulting from footnote 11 referred to above). To the extent that the remaining paragraphs of the April 6, 1966 would be left unrevised, our reasons are the same as those expressed above with respect to Appendix A. See pp. 28-29, supra.

2. The unions' proposed judgments. In the meeting of counsel on May 18th, we were given copies of drafts of proposed judgments prepared by counsel for the unions, and we have since been orally advised of certain changes therein. Our comments below are based upon that information. But we have not yet seen the final submission by the unions to the Court, including their explanation of the grounds for the various provisions of the judgments

which they propose. In addition, we have had to deal with the proposals by the BLF&E and the ORC&B, as well as prepare three sets of proposals and supporting memoranda of our own, so that we have been pressed for time. Unless the Court deems such action to be inappropriate, therefore, we may file further comments upon the proposals by the unions after we have had an opportunity to study their submission to the Court. We have already noted our disagreements with the unions concerning the form of the proposed judgments. We comment below, therefore, only upon the substance of the proposals.

Nos. 20,152 and 20,172. There is no problem with the change in dates proposed to be made in paragraph 1 of the judgment below, unless this Court reconsiders its ruling in footnote 11 that January 24, 1966 was the last day of the Award as we have requested. There is no justification whatsoever, however, for the sentence which the unions propose to add to paragraph 1, as follows:

"No change in crew consist in effect on the effective date of the Award could be made except by agreement or pursuant to the Award during the period of the Award or thereafter in accordance with the Railway Labor Act."

The first part of that sentence--that "crew consist" could not be changed "during the period of the Award" except "by agreement or pursuant to the Award"--represents a none too subtle attempt to have this Court decide in these cases that Arbitration Board No. 282 improperly interpreted its Award despite the fact that the issue has never been raised in these cases and has now been decided adversely to the unions by another panel of the Court in Nos. 19,867, 20,003 and 20,004. Section III-A(2) of the Award provides that no "change shall be made in the scope or application of rules . . . which require a stipulated number of trainmen" in road service or "a stipulated number of brakemen or

helpers" in yard service, except by agreement or pursuant to the Award. Board 282 has ruled on a number of occasions, including its answer to BRT Question No. 33, that this language means just what it says and thus prohibits changes (except by agreement or pursuant to the Award) only in rules which require a stipulated number of trainmen, etc., on crews in road and yard service. In those instances where a carrier's rules prior to the Award did not require the use of a stipulated number of trainmen, etc., but left the number to be determined by the carrier in the exercise of its managerial discretion, the carrier could continue to exercise that discretion and change the consist of crews without obtaining an agreement or special-board award. A petition by the BRT to impeach the answer to BRT Question No. 33 was dismissed by the District Court, which action was affirmed by this Court in Nos. 19,867, 20,003 and 20,004 on May 19, 1967. In that opinion, the Court noted that there "is obviously no difference between the Award and the Board's interpretation of it" (Opinion, at 3).

The unions apparently will rely upon a statement made more or less in passing by this Court, in the "historical" section of its May 12, 1967 opinion (p. 12), that Board 282 "ruled that no change in crew consist be made except pursuant to the Award." If that statement were intended to be a precise description of what Board 282 provided in the crew-consist provisions of its Award, obviously it is erroneous--whether rightly or wrongly, Board 282 has ruled that changes in crew consist through the exercise of managerial discretion may continue to be made when that was permitted prior to the Award. But obviously, this Court did not intend either a precise description of the Award or to rule upon the validity of the Answer to BRT Question No. 33--an issue which is not involved in these cases. As Justice Jackson stated for the Supreme Court:

"It is timely again to remind counsel that words of our opinions are to be read in the light of the facts of the case under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court. General expressions transposed to other facts are often misleading."

Armour & Co. v. Wantock, 323 U.S. 126, 132-133 (1944). In its May 19, 1967 opinion in Nos. 19,867, 20,003 and 20,004, at page 4, this Court rejected a similar argument based upon a statement in a prior opinion in which "the District Judge was merely summarizing the Award . . . ."

The second part of the sentence proposed to be added to paragraph 1 of the judgment below--that "crew consist" may not be changed after the expiration of the Award except "in accordance with the Railway Labor Act"--has the same vice as the first part of the sentence in that it would prohibit a carrier from changing the consist of crews in the exercise of its managerial discretion even though neither the Award nor any rule or agreement requires the use of a stipulated number of crewmen. Furthermore, the second part of that sentence would substantially nullify the ruling by this Court "that the work rules created by the Award constituted a new plateau" which continues until changed in accordance with the Railway Labor Act because the "mandate" of that Act "requires that the work rules in effect on any particular day shall also be in effect the following day . . . subject to change only in accordance with the procedures prescribed by the Act." (Opinion, at 17).

What cannot be changed except in accordance with the Railway Labor Act, under the ruling of the Court, are the rules not the consist of crews. Thus, Section 6 of the Act requires thirty days' written notice of intended changes in "rates of pay, rules, or working conditions," rather than of changes in the consist of crews. Where a carrier's rules requiring the use of a stipulated



number of trainmen were amended by an agreement or special-board award pursuant to Award 282 so as to permit the discontinuance of certain positions, the carrier's right to discontinue those positions is subject to its obligation under its rules as modified by the Award to provide employment to "protected" employees until removed by natural attrition. Thus, when a "protected" employee dies, retires, etc. the carrier can "discontinue or blank" an assignment--and thereby change the consist of a crew--which it was permitted to discontinue by an agreement or special-board award but had not previously done so because the assignment was needed to provide employment to a "protected" employee. So, too, the consist of crews may be changed pursuant to the carrier's rules as modified by the Award by moving employees from positions which the carrier is authorized to discontinue to the extra board so as to meet the needs of the board. That matter was the subject of an opinion by another panel of this Court on May 13, 1967, in No. 20,135. There may be other circumstances in which the consist of a crew may be changed under a carrier's rules. Indeed, a crew may be abolished altogether when it is no longer needed because of reductions in business or for other reasons. If the rules in effect on any particular day continue in effect on the next day until changed in accordance with the Act, as this Court held, plainly a carrier does not have to serve a Section 6 notice and exhaust all the procedures of the Railway Labor Act in order to change the consist of a crew when its rules already permit it to change the consist of the crew either at its discretion or in the circumstances involved.

The changes in dates provided for in numbered paragraphs 2, 3, 4, 5 and 6 of the proposed judgment are unobjectionable, if the Court denies our request that it reconsider its ruling that January 24, 1966, rather than January 25, 1966, was the last day of the Award. The changes proposed, in numbered paragraphs 3 and 4, relating to the special-board award rendered on January 25, 1966 are objectionable in that no provision is made for the right of the carriers in a

further hearing to establish an understanding or agreement by the parties that the special-board award could be rendered on January 25, 1966 pursuant to Award 282. The unions would give no effect whatever to the emphasized (our emphasis) portion of the ruling by the Court, in its footnote 11, that the special-board award is "without legal significance, unless it has been adopted by agreement of the parties, a question not before us." Of course, if the Court should hold in response to our request for a further ruling that the crew-consist procedure established by the Award may validly be completed after the expiration of the Award, or if the Court should hold in response to our request for reconsideration that January 25, 1966 was the last day of the Award, the proposed modifications of the judgment below relating to the special-board award in question should be disregarded altogether.

The modifications in paragraphs 5 and 6 of the judgment below (except for the proposed changes in dates), proposed in numbered paragraphs 5 and 6, would have the effect of declaring that three crew-consist agreements have no effect after the expiration of the Award and the old rules which were modified by those agreements were automatically restored. One of those agreements ("Section G") involved the Richmond, Fredericksburg & Potomac R. Co., and the other two ("(6)" and "(13)") were among the agreements listed in Section F of the Stipulation as to Facts. We have already noted our view that the Court, while not expressly referring to those agreements, intended to affirm the rulings below with respect to all of the crew-consist agreements made pursuant to Award 282 including the three in question. See 4-5, supra. \*/

\*/ The two agreements in Section F of the Stipulation as to which the unions would reverse the court below are an agreement entered into by the BRT with the Kansas City Southern and the Louisiana & Arkansas railroads (F(6)) and an agreement entered into by the BRT with the Wichita Terminal Association (F(13)). Those two agreements are discussed at pp. 31-33 of our Brief in Nos. 20,152 and 20,172. We discuss the RF&P agreement at pp. 33-34 of that brief.



In numbered paragraph 7 of the proposed order, the unions propose to eliminate paragraph 7 of the judgment entered below. This is one of those instances in which counsel for the unions takes the position that a matter not mentioned in this Court's opinion either has been reversed or else drops out of the case. See p. 26, supra. Paragraph 7 of the judgment below expresses the holding of the District Court that any carrier which either served the 1959 notice or received the 1960 notice was subject to P.L. 88-108 and Award 282 with respect to the union involved, if either of those notices remained outstanding throughout the period prior to the enactment of P.L. 88-108. Paragraph 8 also applies that ruling to two carriers as to which the issue was specifically raised by the unions. As stated at pp. 22-23, there is some indication from this Court's opinion that it agreed with the ruling of the Court below, but we are not at all certain that the Court focused upon the issue. It is our view that any aspects of the decisions below which were not ruled upon by this Court remain undisturbed unless a supplemental ruling is requested, but if the Court agrees with the contrary approach taken by the unions and has not ruled already upon the issue we request a supplemental ruling thereon.

In numbered paragraph 8, the unions propose a modification in paragraph 8 of the judgment below to conform with their proposed deletion of paragraph 7 of that judgment. Thus, the proposed modification of paragraph 8 is objectionable for the same reasons as the proposed deletion of paragraph 7.

In numbered paragraph 9, the unions propose to replace paragraph 9 in the judgment below with a substitute paragraph 9. That proposal is based upon the ruling by this Court that the Section 6 notices served during the period of the Award were not premature, thereby reversing the decision below in that regard.

Should the Court grant our request for reconsideration of that holding, the unions' proposal obviously will be inappropriate. In the event that the Court should deny our request, we believe that the modification in paragraph 9 of the judgment below which we propose in numbered paragraph 7 of Appendix C hereto is preferable. See p. 31, supra.

In numbered paragraph 10, the unions propose to delete from paragraph 10 of the judgment below the following sentence: "None of the provisions of the Norris-LaGuardia Act (29 U.S.C. §§101-113) applies to injunctions against such strikes or work stoppages." That sentence was included in the judgment below at the request of counsel for the unions, in the belief that it would provide a basis for raising the Norris-LaGuardia issue in these appeals. We have taken the position that that issue is not properly in the case since no injunction was requested or entered below (apart from a temporary restraining order which expired prior to the appeals). Consistent with that position, we have no objection to deletion of the sentence if it is done on that basis, although we don't believe that the unions are in a position to request that that be done. As we have noted (p. 23, supra), the opinion by the Court in No. 20,316 establishes that the Court agrees with our position on the merits of the Norris-LaGuardia issue.

In numbered paragraph 11, the unions propose to reserve jurisdiction in this Court, as well as in the District Court, of applications "for such further orders as may be necessary or appropriate for the construction, carrying out, or enforcement of this Judgment." We have already stated our reasons for believing that the Court did not intend to permit such applications to be made directly to this Court, by-passing the District Court, whenever the parties so desire. See p. 25, supra.

Nos. 20,229 and 20,249. In these cases, the unions proposed the entry of a judgment which would completely rewrite the May 31, 1966 order by the District Court. In addition to our view that any judgment entered by the Court should provide for a remand to the court below for the entry of a new order, we note that a favorable ruling upon our request for reconsideration of the Court's holding on the prematurity issue would obviate any need for a change in the May 31, 1966 order. See p. 29, supra. Moreover, for the reasons stated at pp. 29-30, supra, we believe that the proper course is merely to direct the entry of an order dismissing the carriers' motion for supplemental relief in the event that the Court adheres to its holding on the prematurity issue.

Respectfully submitted,

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20,152, 20,229 and 20,249 and  
for Appellants in No. 20,172.

CERTIFICATE OF GOOD FAITH

I hereby certify that the foregoing Petition for Rehearing, Request for Supplemental Rulings and Proposed Judgment is presented in good faith and not for purposes of delay.

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Francis M. Shea

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Rehearing, Request for Supplemental Rulings and Proposed Judgment has been served upon Appellants in Nos. 20,152, 20,229 and 20,249 and upon Appellees in No. 20,172, this 22d day of May 1967, by delivery of copies to Milton Kramer, Schoene & Kramer, 1625 K Street, N.W., Washington, D.C., attorney for the said parties.

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Richard T. Conway

APPENDIX A

[Caption--Nos. 20152, 20172, 20229 and 20249]

Before Danaher, Circuit Judge, Bastian, Senior Circuit Judge, and Leventhal, Circuit Judge.

JUDGMENT

These appeals came on to be heard on the records from the United States District Court for the District of Columbia and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order of the District Court entered on May 31, 1966 and appealed from in Nos. 20,229 and 20,249 is affirmed, and

It is further ordered and adjudged by this Court that the judgment of the District Court entered on April 6, 1966 and appealed from in Nos. 20,152 and 20,172 is remanded to the District Court with directions to modify the said judgment by removing paragraphs 2 and 3 thereof and substituting the following paragraphs 2 and 3:

"2. After January 25, 1966, proceedings with respect to proposed changes in crew-consist rules may continue to be initiated and completed under the procedures established by Section III of the Award until such procedures are changed in accordance with the provisions of the Railway Labor Act (45 U.S.C. §§151-160). Agreements entered into and awards of special boards of adjustment issued pursuant to such proceedings are not invalidated by the fact that the proceedings were initiated and completed after January 25, 1966.

"3. In those instances in which proceedings were initiated under the procedures established by Section III of the Award on or before January 25, 1966, but such proceedings were not completed as of January 25, 1966 by an agreement or an award of a special board of adjustment, the proceedings may validly be completed after January 25, 1966. Agreements entered into and

awards of special boards of adjustment issued after January 25, 1966 pursuant to such proceedings are not invalidated by the fact that the proceedings were not completed until after January 25, 1966. This ruling applies to the proceedings initiated by the Chicago and North Western Railway Company (M&StL District) described in Section I(1) of the Stipulation as to Facts, to the proceedings initiated by the Great Northern Railway Company described in Section I(2) of the Stipulation as to Facts, to the proceedings initiated by the Lake Superior Terminal and Transfer Railway Company described in Section I(3) of the Stipulation as to Facts, and the proceedings initiated by the St. Louis Southwestern Railway Company described in Section I(4) of the Stipulation as to Facts."

APPENDIX B

[Civil Action No. 142-66--Caption and recitals omitted.]

IT IS HEREBY ORDERED, DECLARED AND ADJUDGED:

1. The period during which Section III of the Award by Arbitration Board No. 282 "shall continue in force" as between plaintiffs and defendants, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108, expired on January 25, 1966.

~~2. After January 25, 1966, proceedings may not be initiated under Section III of the Award with respect to proposed changes in crew-consist rules.~~

2. After January 25, 1966, proceedings with respect to proposed changes in crew-consist rules may continue to be initiated and completed under the procedures established by Section III of the Award until such procedures are changed in accordance with the provisions of the Railway Labor Act (45 U.S.C. §§151-160). Agreements entered into and awards of special boards of adjustment issued pursuant to such proceedings are not invalidated by the fact that the proceedings were initiated and completed after January 25, 1966.

3. In those instances in which proceedings were initiated under the procedures established by Section III of the Award on or before January 25, 1966, but such proceedings were not completed as of January 25, 1966 by an agreement or an award of a special board of adjustment, ~~the matter cannot be referred under Section III of the Award to a special board of adjustment after January 25, 1966 and a special board of adjustment constituted on or before January 25, 1966 no longer has~~

~~jurisdiction-of-the-matter-after-January-25,-1966---Any-award-issued-by-such~~  
~~a-special-board-of-adjustment-after-January-25,-1966-is-ineffective.~~ the  
proceedings may validly be completed after January 25, 1966. Agreements  
entered into and awards of special boards of adjustment issued after  
January 25, 1966 pursuant to such proceedings are not invalidated by the  
fact that the proceedings were not completed until after January 25, 1966.  
This ruling applies to the proceedings initiated by the Chicago and North  
Western Railway Company (M&STL District) described in Section I(1) of the  
Stipulation as to Facts, to the proceedings initiated by the Great  
Northern Railway Company described in Section I(2) of the Stipulation as to  
Facts, to the proceedings initiated by the Lake Superior Terminal and  
Transfer Railway Company described in Section I(3) of the Stipulation as  
to Facts, and to the proceedings initiated by the St. Louis Southwestern  
Railway Company described in Section I(4) of the Stipulation as to Facts.

4. Awards issued on or before January 25, 1966 by special boards  
of adjustment pursuant to Section III of the Award by Arbitration Board No.  
282 created a new status which is to be maintained after January 25, 1966  
until changed by agreement or until the procedures of the Railway Labor Act  
(45 U.S.C. §§151-160) have been exhausted with respect to notices served  
under Section 6 of the Railway Labor Act (45 U.S.C. §156) proposing changes  
in the status thus created. Unless otherwise agreed to by the parties,  
"protected employees," as defined in Section III-D(1) of the Award by  
Arbitration Board No. 282 and in interpretations thereof by the Board, shall  
continue to enjoy the protections provided in Section III-D(2) of the Award  
and in interpretations thereof by Arbitration Board No. 282, and application



of the changes in crew-consist rules authorized by such special board awards is subject to the provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies to the awards by special boards of adjustment described in Section A of the Stipulation as to Facts.

5. Agreements entered into on or before January 25, 1966 pursuant to Section III of the Award by Arbitration Board No. 282, with the exception of the agreements referred to in paragraph 6 below, also created a new status which is to be maintained after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed to by the parties, "protected employees," as defined in Section III-D(1) of the Award by Arbitration Board No. 282 and in interpretations thereof by the Board, shall continue to enjoy the protections provided in Section III-D(2) of the Award and in interpretations thereof by Arbitration Board No. 282, and application of the changes in crew-consist rules authorized by such agreements is subject to the provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies to the agreements described in Section B (with the exception of the agreement referred to in paragraph 8 below), Section C, Section D, Section E and Section G of the Stipulation as to Facts, and to the agreements described in subsections (1), (3), (4), (5), (6), (8), (9), (11), (12) and (13) of Section F of the Stipulation as to Facts.

6. Agreements entered into on or before January 25, 1966 pursuant to Section III of the Award by Arbitration Board No. 282 which contain an express provision to the effect that prior crew-consist rules shall again be in

full force and effect upon the expiration of the Award by Arbitration Board No. 282 did not create a status which continued after the expiration of the Award, and such prior crew-consist rules are in effect after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under Section 6 of the Railway Labor Act proposing changes in such rules. This ruling applies to the agreements described in subsections (2), (7) and (10) of Section F of the Stipulation as to Facts.

7. A carrier and its employees represented by one of the defendants were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the carrier either served the defendant organization with the Section 6 notices of November 2, 1959 described in paragraph 8 of the Complaint or was served by the defendant organization with the Section 6 notices of September 7, 1960 described in paragraph 10 of the Complaint, or both, and such notices remained in effect throughout the period prior to the enactment of Public Law 88-108. All of the plaintiffs and their employees represented by one of the defendants, with the exception of the plaintiffs and their employees referred to in paragraph 8 below, consequently were subject to Public Law 88-108 and the Award issued thereunder, including the carriers and their employees represented by defendant Brotherhood of Railroad Trainmen referred to in Sections O and P of the Stipulation as to Facts.

8. Under the ruling set forth in paragraph 7 above as applied to the circumstances set forth in Section N of the Stipulation as to Facts, the

plaintiffs identified in Section N of the Stipulation as to Facts and their employees represented by the defendant Brotherhood of Railroad Trainmen were not subject to Public Law 88-108 and the Award by Arbitration Board No. 282. Those plaintiffs and the Brotherhood of Railroad Trainmen, however, entered into an Agreement (annexed as Exhibit M to the Stipulation as to Facts), dated July 26, 1966, which states, among other things, that:

"This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III - Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282."

The said Agreement creates a new status which is to be maintained after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed by the parties, "protected yardmen" as defined in Section II(a) of the Agreement of July 26, 1965 and "protected trainmen" as defined in Section IV(a) of the Agreement of July 26, 1965, shall continue to enjoy the protections provided in Section II(b) and (d) or in Section IV(b) and (d), respectively, of the said Agreement, and application of the changes in crew-consist rules authorized by such agreement is subject to the provisions of Section II and IV thereof.

9. Notices of proposed changes in crew-consist rules served pursuant to Section 6 of the Railway Labor Act, between January 25, 1964 and January 25, 1966, by a defendant upon a plaintiff or by a plaintiff upon a defendant, did not become effective under the Railway Labor Act until January 26, 1966 -- the day after the expiration of the Award by Arbitration

Board No. 282. This ruling applies to the notices referred to in Sections Q and R of the Stipulation as to Facts.

10. The defendants (including their lodges, divisions, locals, officers, agents, members and persons acting in concert with them) may not engage in any strikes or work stoppages over the application after January 25, 1966 of the agreements and special board awards which, under the rulings set forth above, created a new status that is to be maintained after January 25, 1966, unless and until such a defendant is entitled under the Railway Labor Act to resort to self help with respect to notices served under Section 6 of the Railway Labor Act proposing changes in the status created by such agreements and special board awards. None of the provisions of the Norris-LaGuardia Act (29 U.S.C. §§101-113) applies to injunctions against such strikes or work stoppages. Since plaintiffs have not pressed the prayer in their Complaint for injunctive relief, however, the Court does not determine whether injunctive relief otherwise would be warranted at this time and does not grant any injunctive relief at this time.

11. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.

12. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the plaintiffs against the defendants Brotherhood of Railroad

Trainmen, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, and of the counterclaims by the said defendants against plaintiffs.

Dated: April 6, 1966

/s/ Alexander Holtzoff  
United States District Judge

APPENDIX C

[Caption--Nos. 20,152, 20,172, 20,229 and 20,249]

Before Danaher, Circuit Judge, Bastian, Senior Circuit Judge, and Leventhal, Circuit Judge.

JUDGMENT

These appeals came on to be heard on the records from the United States District Court for the District of Columbia and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order of the District Court entered on May 31, 1966 and appealed from in Nos. 20,229 and 20,249 is remanded to the District Court with directions to vacate the said order and to enter an order denying the Motion by Plaintiffs for Supplemental Relief against Brotherhood of Railroad Trainmen, and

It is further ordered and adjudged by this Court that the judgment of the District Court entered on April 6, 1966 and appealed from in Nos. 20,152 and 20,172 is remanded to the District Court with directions to modify the said judgment as follows:

1. In paragraph 1, change "January 25, 1966" to read "January 24, 1966."
2. In paragraph 2, change "January 25, 1966" to read "January 24, 1966."
3. In paragraph 3, change "January 25, 1966" each time it appears to read "January 24, 1966," and add the following sentence at the end of the paragraph: "This ruling also applies to the award by a special board of adjustment issued on January 25, 1966 in a dispute between the Brotherhood of Railroad Trainmen and the Green Bay & Western Railroad Company and the Kewaunee. Green Bay & Western Railroad Company, listed in Section A of the Stipulation as to Facts, unless it be established in a further hearing before the District Court that the parties to the said award understood or agreed that Section III of

the Award by Arbitration Board No. 282 would continue in force through January 25, 1966 or otherwise adopted the said award by agreement."

4. In paragraph 4, change "January 25, 1966" each time it appears to read "January 24, 1966," and change the last sentence of the paragraph to read as follows: "This ruling applies to the awards by special boards of adjustment described in Section A of the Stipulation as to Facts, except that it shall not apply to the award by a special board of adjustment issued on January 25, 1966 in a dispute between the Brotherhood of Railroad Trainmen and the Green Bay & Western Railroad Company and the Kewaunee, Green Bay & Western Railroad Company, listed in the said Section A of the Stipulation as to Facts, unless it be established in a further hearing before the District Court that the parties to the said award understood or agreed that Section III of the Award of Arbitration Board No. 282 would continue in force through January 25, 1966 or otherwise adopted the said award by agreement."

5. In paragraph 5, change "January 25, 1966" each time it appears to read "January 24, 1966."

6. In paragraph 6, change "January 25, 1966" each time it appears to read "January 24, 1966."

7. Change paragraph 9 to read as follows: "The notices of proposed changes in crew-consist rules served pursuant to Section 6 of the Railway Labor Act, between January 25, 1964 and January 25, 1966, by a defendant upon a plaintiff or by a plaintiff upon a defendant, were not premature or invalid because served prior to the expiration of the period during which Section III of the Award by Arbitration Board No. 282 "shall continue in force" as between plaintiffs and defendants, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108. This ruling applies to the notices referred to in Sections Q and R of the Stipulation as to Facts."

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8. In paragraph 10, change "January 25, 1966" each time it appears to read "January 24, 1966."



APPENDIX D

[Civil Action No. 142-66--Caption and recitals omitted.]

IT IS HEREBY ORDERED, DECLARED AND ADJUDGED:

1. The period during which Section III of the Award by Arbitration Board No. 282 "shall continue in force" as between plaintiffs and defendants, as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108, expired on ~~January-25,-1966-~~ January 24, 1966.

2. After ~~January-25,-1966,~~ January 24, 1966. proceedings may not be initiated under Section III of the Award with respect to proposed changes in crew-consist rules.

3. In those instances in which proceedings were initiated under Section III of the Award on or before ~~January-25,-1966-~~ January 24, 1966, but such proceedings were not completed as of ~~January-25,-1966-~~ January 24, 1966 by an agreement or an award of a special board of adjustment, the matter cannot be referred under Section III of the Award to a special board of adjustment after ~~January-25,-1966~~ January 24, 1966 and a special board of adjustment constituted on or before ~~January-25,-1966~~ January 24, 1966 no longer has jurisdiction of the matter after ~~January-25,-1966--~~ January 24, 1966. Any award issued by such a special board of adjustment after ~~January-25,-1966~~ January 24, 1966 is ineffective. This ruling applies to the proceedings initiated by the Chicago and North Western Railway Company (M&STL District) described in Section I(1) of the Stipulation as to Facts, to the proceedings initiated by the Great Northern Railway Company described in Section I(2) of the Stipulation as to Facts, to the proceedings initiated by the Lake

Superior Terminal and Transfer Railway Company described in Section I(3) of the Stipulation as to Facts, and to the proceedings initiated by the St. Louis Southwestern Railway Company described in Section I(4) of the Stipulation as to Facts. This ruling also applies to the award by a special board of adjustment issued on January 25, 1966 in a dispute between the Brotherhood of Railroad Trainmen and the Green Bay & Western Railroad Company and the Kewaunee, Green Bay & Western Railroad Company, listed in Section A of the Stipulation as to Facts, unless it be established in a further hearing before the District Court that the parties to the said award understood or agreed that Section III of the Award by Arbitration Board No. 282 would continue in force through January 25, 1966 or otherwise adopted the said award by agreement.

4. Awards issued on or before ~~January-25,-1966~~ January 24, 1966 by special boards of adjustment pursuant to Section III of the Award by Arbitration Board No. 282 created a new status which is to be maintained after ~~January-25,-1966~~ January 24, 1966 until changed by agreement or until the procedures of the Railway Labor Act (45 U.S.C. §§151-160) have been exhausted with respect to notices served under Section 6 of the Railway Labor Act (45 U.S.C. §156) proposing changes in the status thus created. Unless otherwise agreed to by the parties, "protected employees," as defined in Section III-D(1) of the Award by Arbitration Board No. 282 and in interpretations thereof by the Board, shall continue to enjoy the protections provided in Section III-D(2) of the Award and in interpretations thereof by Arbitration Board No. 282, and application of the changes in crew-consist rules authorized by such special board awards is subject to the

provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies to the awards by special boards of adjustment described in Section A of the Stipulation as to Facts, except that it shall not apply to the award by a special board of adjustment issued on January 25, 1966 in a dispute between the Brotherhood of Railroad Trainmen and the Green Bay & Western Railroad Company and the Kewaunee, Green Bay & Western Railroad Company, listed in the said Section A of the Stipulation as to Facts, unless it be established in a further hearing before the District Court that the parties to the said award understood or agreed that Section III of the Award of Arbitration Board No. 282 would continue in force through January 25, 1966 or otherwise adopted the said award by agreement.

5. Agreements entered into on or before January-25,-1966 January 24, 1966 pursuant to Section III of the Award by Arbitration Board No. 282, with the exception of the agreements referred to in paragraph 6 below, also created a new status which is to be maintained after January-25,-1966 January 24, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed to by the parties, "protected employees," as defined in Section III-D(1) of the Award by Arbitration Board No. 282 and in interpretations thereof by the Board, shall continue to enjoy the protections provided in Section III-D(2) of the Award and in interpretations thereof by Arbitration Board No. 282 and application of the changes in crew-consist rules authorized by such agreements is subject to the provisions of Section III-D of the Award by Arbitration Board No. 282. This ruling applies

to the agreements described in Section B (with the exception of the agreement referred to in paragraph 8 below), Section C, Section D, Section E and Section G of the Stipulation as to Facts, and to the agreements described in subsections (1), (3), (4), (5), (6), (8), (9), (11), (12) and (13) of Section F of the Stipulation as to Facts.

6. Agreements entered into on or before ~~January-25,-1966~~ January 24, 1966 pursuant to Section III of the Award by Arbitration Board No. 282 which contain an express provision to the effect that prior crew-consist rules shall again be in full force and effect upon the expiration of the Award by Arbitration Board No. 282 did not create a status which continued after the expiration of the Award, and such prior crew-consist rules are in effect after ~~January-25,-1966~~ January 24, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under Section 6 of the Railway Labor Act proposing changes in such rules. This ruling applies to the agreements described in subsections (2), (7) and (10) of Section F of the Stipulation as to Facts.

7. A carrier and its employees represented by one of the defendants were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the carrier either served the defendant organization with the Section 6 notices of November 2, 1959 described in paragraph 8 of the Complaint or was served by the defendant organization with the Section 6 notices of September 7, 1960 described in paragraph 10 of the Complaint, or both, and such notices remained in effect throughout the period prior to the enactment of Public Law 88-108. All of the plaintiffs

and their employees represented by one of the defendants, with the exception of the plaintiffs and their employees referred to in paragraph 8 below, consequently were subject to Public Law 88-108 and the Award issued thereunder, including the carriers and their employees represented by defendant Brotherhood of Railroad Trainmen referred to in Sections O and P of the Stipulation as to Facts.

8. Under the ruling set forth in paragraph 7 above as applied to the circumstances set forth in Section N of the Stipulation as to Facts, the plaintiffs identified in Section N of the Stipulation as to Facts and their employees represented by the defendant Brotherhood of Railroad Trainmen were not subject to Public Law 88-108 and the Award by Arbitration Board No. 282. Those plaintiffs and the Brotherhood of Railroad Trainmen, however, entered into an Agreement (annexed as Exhibit M to the Stipulation as to Facts), dated July 26, 1966, which states, among other things, that:

"This agreement shall become effective July 26, 1965, and shall continue in effect until January 25, 1966, and thereafter to the same extent as if it were an award of a Special Board of Adjustment rendered in pursuance of Section III - Consist of Road and Yard Crews (Other Than Engine Service) of the Award of Arbitration Board No. 282."

The said Agreement creates a new status which is to be maintained after January 25, 1966 until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to notices served under the Railway Labor Act proposing changes in the status thus created. Unless otherwise agreed by the parties, "protected yardmen" as defined in Section II(a) of the Agreement of July 26, 1965 and "protected trainmen" as defined in Section IV(a) of the Agreement of July 26, 1965, shall continue to enjoy the protections provided in Section II(b) and (d) or in



Section IV(b) and (d), respectively, of the said Agreement and application of the changes in crew-consist rules authorized by such agreement is subject to the provisions of Section II and IV thereof.

9. ~~Notices~~ The notices of proposed changes in crew-consist rules served pursuant to Section 6 of the Railway Labor Act, between January 25, 1964 and January 25, 1966, by a defendant upon a plaintiff or by a plaintiff upon a defendant, ~~did not become effective under the Railway Labor Act until January 26, 1966---the day after the expiration of the Award by Arbitration Board No. 282-~~ were not premature or invalid because served prior to the expiration of the period during which Section III of the Award by Arbitration Board No. 282 "shall continue in force" as between plaintiffs and defendants, as provided by Section IV of that Award pursuant to Section 4 of Public Law 88-108. This ruling applies to the notices referred to in Sections Q and R of the Stipulation as to Facts.

10. The defendants (including their lodges, divisions, locals, officers, agents, members and persons acting in concert with them) may not engage in any strikes or work stoppages over the application after ~~January 25, 1966~~ January 24, 1966 of the agreements and special board awards which, under the rulings set forth above, created a new status that is to be maintained after ~~January 25, 1966~~ January 24, 1966, unless and until such a defendant is entitled under the Railway Labor Act to resort to self help with respect to notices served under Section 6 of the Railway Labor Act proposing changes in the status created by such agreements and special board awards. None of the provisions of the Norris-LaGuardia Act (29 U.S.C. §§101-113) applies to injunctions against such strikes or work stoppages.

Since plaintiffs have not pressed the prayer in their Complaint for injunctive relief, however, the Court does not determine whether injunctive relief otherwise would be warranted at this time and does not grant any injunctive relief at this time.

11. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.

12. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the plaintiffs against the defendants Brotherhood of Railroad Trainmen, Switchmen's Union of North America and Bill Doak Lodge Division 584, Brotherhood of Railroad Trainmen, and of the counterclaims by the said defendants against plaintiffs.

Dated: April 6, 1966

/s/ Alexander Holtzoff  
United States District Judge

